16-154

# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

No. ~~324.~~ 8

THE STEAMSHIP NEVADA, HER TACKLE, &c., THE LIVERPOOL & GREAT WESTERN STEAM COMPANY, LIMITED, CLAIMANT, APPELLANT,

vs.

SERGEANT J. QUICK, LIBELLANT, AND FREDERICK A. McKNIGHT, COLIBELLANT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

**FILED OCTOBER 13, 1879.**

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1 UNITED STATES OF AMERICA,
*Southern District of New York, ss:*

SERGEANT J. QUICK & AL., LIBELLANTS & APPELLEES,
*vs.*
THE STEAMSHIP NEVADA, HER TACKLE, &C., the Liverpool & Great Western Steam Co. (Limited), claimant & appellant. } 26155.

I, George F. Betts, clerk of the district court of the United States of America for the southern district of New York, do hereby certify that the writings annexed to this certificate are true copies of their respective originals on file and remaining of record in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, this 15th day of May, A. D. 1878, and of the Independence of the said United States the one hundred and second.

[L. S.] GEO. F. BETTS, *Clerk.*

In admiralty.

To the Hon. Samuel Blatchford, judge of the district court of the United States for the southern district of New York:

The libel of Sergeant J. Quick, master and owner of the canal-boat Kate Green, of Geddes, in the State of New York, for himself and for F. A. McKnight, of the city of Buffalo, State of New York, against the steamship Nevada, her tackle, apparel and furniture, steam-engines and boilers, and against all persons lawfully intervening for their interest in the same, in a cause of collision, civil and maritime, alleges as follows:

First. That your libellant, before and at the time of the collision hereinafter mentioned, was master and owner of the said canal-boat called the Kate Green, of Coughdenoy; and that, as your libellant is informed and believes, the Western Insurance Company of Buffalo were insurers of about eighty-one hundred bushels of corn constituting the cargo on board of the said canal-boat Kate Green at the time of the collision herein set forth, and that whatever right, title, and interest became vested by subrogation or otherwise in the said insurance company by reason of said collision thereafter became vested by mesne assignments in said F. A. McKnight.

2 Second. That on Wednesday, the twenty-seventh day of September, A. D. eighteen hundred and seventy-one, and while the said canal-boat Kate Green was lying duly and securely fastened in the slip between piers forty-six and forty-seven North River, in the city of New York, between the hours of two and five o'clock in the afternoon, the steamship Nevada, which had previously been moored to the north side of pier forty-six, North River, proceeded on her way to sea, and, having ample and sufficient sea-room therefor, carelessly and negligently ran into and struck the said canal-boat Kate Green repeatedly with her propeller, below her water-line, causing the said canal-boat to fill with water and sink, so as to damage both boat and cargo aforesaid.

Third. That at the time the said steamship Nevada ran into the said canal-boat Kate Green, as aforesaid, the said canal-boat Kate Green was tight, staunch, and strong, and in every respect well manned,

tackled apparalled, and appointed, having the usual and necessary complement of officers and men, and was duly, properly, and securely moored and fastened between said slips.

Fourth. That the damage done to the cargo by reason of the said collision, and the flooding of the cargo with sea-water, was so great as to cause a total loss of the said cargo and boat to the owners thereof respectively; and that by reason of the damage done to said canal-boat by said colliding vessel, through the negligence of those navigating her, the libellants herein and the said insurers have suffered loss to the extent hereinafter mentioned.

Fifth. That the collision above set forth, and the damage resulting therefrom to this libellant, and him for whom he proceeds, are directly attributable to the negligence, want of skill, and improper conduct of those in charge of and navigating the said steamship Nevada,
3 and not to any fault, omission, or neglect on the part of the said canal-boat Kate Green, her master and crew.

Sixth. That the libellant, and he for whom said libellant proceeds herein, in consequence of the said collision, have sustained damages to the amount of twelve thousand dollars, which said damages were occasioned, as above alleged, by the negligence and want of skill and improper conduct on the part of the persons navigating the said steamship Nevada, and not by or through any fault, negligence, or improper conduct on the part of persons on board the canal-boat Kate Green.

Seventh. That the said steamship Nevada is now lying in the port of New York, and within the jurisdiction of this court.

Eighth. That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore the libellant prays that process in due form of law, according to the course of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the said steamship Nevada, her tackle, apparel, and furniture, and her engines and boilers; and that all persons having any interest therein may be cited to appear and answer all and singular the matters aforesaid; and that this honorable court would be pleased to decree the payment of the damages as aforesaid; and that the said steamship Nevada may be condemned; and that the said libellant and he for whom he proceeds herein may have such other and further relief as in law and justice they may be entitled to receive.

EUGENE H. LEWIS,
*Proctor for Libellant*, 21 *Nassau St.*

his
SERGEANT + J. QUICK.
mark.

4 SOUTHERN DISTRICT OF NEW YORK, *ss:*

Sergeant J. Quick, of the town of Geddes, State of New York, the libellant in the foregoing libel, being duly sworn, says that the matters stated in the foregoing libel are true of his own knowledge, excepting those matters stated on information and belief, and those he believes to be true.

his
SERGEANT + J. QUICK.
mark.

Subscribed and sworn to before me this 22d day of Nov., A. D. 1875.

GEO. F. BETTS,
*U. S. Commissioner.*

District court of the United States for the southern district of New York.

*Stipulation for libellant's costs, entered into pursuant to the rules and practice of this court. Filed the 22d day of November*, 1875.

Whereas a libel was filed in this court, on the 22d day of November, in the year of our Lord one thousand eight hundred and seventy-five, by Sergeant J. Quick, against the steamship Nevada, for the reasons and causes in the said libel mentioned, and praying that said steamship, &c., may be condemned, &c., and the said libellant, and Joseph C. Barnes and Francis Henriques, sureties, parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the libellant or his sureties execution may issue against their goods, chattels, and lands for the sum of two hundred and fifty dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is, bound in the sum of two hundred and fifty
5 dollars, conditioned that the libellant above named shall appear and answer to the cause and to interrogatories, and shall pay all such costs as shall be awarded against him by this court, or, in case of appeal, by the appellate court.

his
SERGEANT + J. QUICK.
mark.
J. C. BARNES.
F. HENRIQUES.

Taken and acknowledged this 22d day of November, 1875, before me.
GEO. F. BETTS,
*U. S. Commissioner.*

Nov. 29th, as to Henriques.
GEO. F. BETTS,
*U. S. Commissioner.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Joseph C. Barnes and Francis Henriques, parties to the above stipulation, being duly sworn, doth each depose and say that he resides in the southern district of New York, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.
J. C. BARNES,
F. HENRIQUES.

Sworn to this 22d day of Nov., 1875, before me.
GEO. F. BETTS,
*U. S. Commissioner.*

As to Henriques, Nov. 29, 1875.
GEO. F. BETTS,
*U. S. Commissioner.*

Recorded the 22d day of November, 1875. , c'erk.

6 U. S. district court, southern district of New York.

THE STEAMSHIP NEVADA, LIVERPOOL AND Great Western Steamship Company (Limited), claimants,
*ads.*
SERGEANT J. QUICK.

We hereby consent that process in this action be waived, the claim-

ants herein agreeing to appear and file stipulation for costs and for value, the latter in the sum of $12,000.

It is further agreed that the claimants herein may have two weeks from November 23d, 1875, in which to answer.

November 22d, 1875.

NASH & HOLT,
*Proctors for Claimants.*
EUGENE H. LEWIS,
*Proctor for Libellant.*

7 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Tuesday, the 23d day of November, in the year of our Lord one thousand eight hundred and seventy-five.

Present, the Hon. Samuel Blatchford, district judge.

THE STEAMSHIP NEVADA, THE LIVERPOOL and Great Western Steam Company (Limited).
*asm,*
SERGEANT J. QUICK.

And now John S. Williams and William H. Guion, composing the firm of Williams & Guion, intervening as agents for the interest of the Liverpool and Great Western Steam Company (Limited), owners in the said steamship Nevada, appears before the honorable court and makes claim to the said steamship, &c., as the same are attached by the marshal under process of this court at the instance of Sergeant J. Quick; and the said Williams and Guion aver that they were in possession of the said steamship at the time of the attachment thereof, and that the corporation above named is the true and bona-fide owner of the said steamship, and that no other person is the owner thereof, and
8 the said Williams & Guion the true and lawful bailee thereof as aforesaid; wherefore they pray to defend accordingly.

LIVERPOOL & GREAT WESTERN STEAM COMPANY (LIMITED),
By WILLIAMS & GUION, *Agents.*

NASH & HOLT,
*Proctors for Claimant.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

John S. Williams and William H. Guion, being duly sworn, deposes and says that he resides in the city of New York; that he is one of the firm of Williams & Guion, the above-named agents; that the owners of said steamship reside in England, in the Kingdom of Great Britain, and that this deponent is duly authorized to put in this claim in behalf of the owner of the said steamship; and that the said claim is true of the knowledge of this deponent, except as to the matters therein stated on information and belief, and as to such matters he believes it to be true.

JOHN S. WILLIAMS.
WM. H. GUION.

Sworn to and subscribed this 22d day of November, A. D. 1875, before me.

GEORGE F. BETTS,
*U. S. Commissioner.*

District court of the United States for the southern district of New York.

*Stipulation entered into pursuant to the rules and practice of this court.—Filed the 22d day of November*, 1875.

Whereas a libel was filed in this court on the 22d day of November, in the year of our Lord one thousand eight hundred and seventy-
9 five, by Sergeant J. Quick, against the steamship Nevada, her tackle, &c., for the reasons and causes in the said libel mentioned, and praying that said steamship, &c., may be condemned, &c., and the parties hereto hereby consenting, and that in case of default or contumacy on the part of the claimants or their sureties execution for the sum of two hundred and fifty dollars may issue against their goods, chattels, and lands;

And whereas also a claim has been filed in said cause by Williams & Guion, agents of the Liverpool and Great Western Steam Company (Limited):

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is hereby, bound, in the sum of two hundred and fifty dollars, conditioned that the above named shall pay all costs and expenses which shall be awarded against them by the final decree of this court, or upon appeal by the appellate court.

LIVERPOOL & GREAT WESTERN STEAM COMPANY (LIMITED),
By WILLIAMS & GUION, *Cl'ts.*
JOHN S. WILLIAMS.
WM. H. GUION.

Taken and acknowledged this 22d day of November, 1875, before me.
GEO. F. BETTS,
*U. S. Commissioner.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

John S. Williams and Wm. H. Guion, parties to the above stipulation, being duly sworn, doth depose and say that he resides in the southern district of New York, that he is worth the sum of five
10 hundred dollars over and above all his just debts and liabilities.
JOHN S. WILLIAMS.
WM. H. GUION.

Sworn to this 22d day of November, 1875, before me.
GEO. F. BETTS,
*U. S. Commissioner.*

Recorded the 22d day of November, 1875.
*Clerk.*

District court of the United States for the southern district of New York. In admiralty.

*Stipulation for value, entered into pursuant to the rules and practice of this court.—Filed the 22d day of November*, 1875.

Whereas a libel was filed on the twenty-second day of November, in the year of our Lord one thousand eight hundred and seventy-five, by Sergeant J. Quick, against the steamship Nevada, her engines, tackle, &c., for the reasons and causes in the said libel mentioned; and whereas

process against the said steamship by consent has been waived; and whereas it has been consented that such process be waived upon the claimants filing due claim to said steamship, and executing stipulations for costs and value, the latter in the sum of twelve thousand dollars, amount sued for, as appears from said consent now on file in said court, and the parties hereto hereby consenting and agreeing that in case of default or contumacy on the part of the claimants of said steamship, or their sureties, execution for the above amount may issue against their goods, chattels, and lands:

11 Now, therefore, the condition of this stipulation is such that if the stipulators undersigned shall at any time, upon the interlocutory or final order or decree of the said district court, or of any appellate court to which the above-named suit may proceed, and upon notice of such order or decree to Nash & Holt, esquires, proctors for the claimants of said steamship Nevada, &c., abide by and pay the money awarded by the final decree rendered by the court, or the appellate court if any appeal intervene, then this stipulation to be void; otherwise to remain in full force and virtue.

LIVERPOOL & G'T WEST'N S. S. CO. (LIMITED)
By WILLIAMS & GUION, *Claimants.*
JNO. S. WILLIAMS.
WM. H. GUION.

Taken and acknowledged this 22d day of November, 1875, before me.

GEO. F. BETTS,
*U. S. Commissioner.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

John S. Williams and William H. Guion, parties to the above stipulation, being duly sworn, doth each depose and say that he resides in the southern district of New York; that he is worth the sum of twenty-four thousand dollars over and above all his just debts and liabilities.

JNO. S. WILLIAMS,
WM. H. GUION.

Sworn to this 22d day of November, 1875, before me.

GEO. F. BETTS,
*U. S. Commissioner.*

Recorded this 22d day of November, 1875.
Approved.

EUGENE H. LEWIS,
*Proctor for Libellant.*

NEW YORK, *November*, 1875.

12 To the honorable Samuel Blatchford, judge of the district court of the United States for the southern district of New York:

The answer of "The Liverpool and Great Western Steam Company (Limited)," a corporation existing under and by virtue of the laws of the Kingdom of Great Britain, intervening for its interest in the steamship Nevada, her tackle, apparel and furniture, steam-engines and boilers, to the libel of Sergeant J. Quick, for himself and for F. A. McKnight, answers and alleges as follows:

First. This respondent, answering, and by way of exception to the said libel, says that the allegations of the said libel are not sufficient to constitute a cause of action against this respondent in behalf of the

Western Insurance Company of Buffalo, or of said F. A. McKnight, or of any other person claiming under said insurance company.

Second. This respondent, further answering, and not in any manner waiving the benefit of the foregoing exception, says that it has no knowledge nor any information sufficient to form a belief as to the truth of the allegations contained in the first article of said libel, or in so much of the sixth article thereof as relates to the amount of damage alleged to have been sustained by these libellants, or either of them, and therefore denies the same.

Third. That this respondent has no knowledge of the matters contained in the second, third, fourth, and fifth articles of said libel, but has understood and believes that the same are, in a great part, falsely alleged, and that the truth is as hereinafter alleged.

Fourth. That on the 27th day of September, 1871, the steamship Nevada, belonging to this respondent, was lying at her berth, on
13 the north side of Pier 46, on the North River, about to proceed to sea, as advertised, and at her usual time of departure; and the steamship Queen was also lying at her berth, on the south side of Pier 47, on the North River, in said city. That in the slip between said Piers 46 and 47, and between the said two steamships, and made fast to said steamship Queen, was the steam-elevator Metropolitan, engaged in lading grain on board said steamship Queen, and that outside of said elevator were two canal-boats. That the canal-boat Kate Green, in the libel mentioned, came or was towed into said slip, and was laid alongside the outermost of the said two canal-boats aforesaid. That said canal-boat Kate Green was made fast by her bow only to the elevator Scotia, also lying alongside said steamship Queen, but further forward than the elevator Metropolitan aforesaid, and that the stern of said canal-boat was not in any manner fastened either to said canal-boats or to said piers, or either of them, or to the bulkhead between said piers. That said canal-boat, being thus negligently and improperly made fast as aforesaid, remained in that position until the hour appointed for the sailing of the steamship Nevada. That the master of said canal-boat was duly notified of the approaching departure of said steamship Nevada, and was warned that the said canal-boat was not properly moored, and that she was exposed to danger from the departure of the said Nevada. That notwithstanding said warning, the said master neglected to take the steps necessary to secure said canal-boat. That said steamship, at the hour appointed, left her berth, and, moving slowly and carefully, proceeded out into the river. That previous to and while so leaving her berth the steam-whistle was blown, the bells on deck were rung, and all usual, proper, and customary precautions were taken to announce the said departure, and to avoid collision with the several lighters and canal-boats lying in said slip. That as the natural and ordinary result of the movement of said steamship
14 through the water, and of the action of her screw, the water was sucked or drawn towards the said steamship, and the stern of said canal-boat, so allowed to remain unfastened as aforesaid, was thereby drawn over to the side of said steamship, and struck against said Nevada with a violent blow.

Fifth. That the said collision was occasioned solely by the carelessness and negligence of the master and crew of said canal-boat Kate Green, and by reason of her improper and insufficient mooring, as aforesaid, and not by or through any negligence, carelessness, or want of skill of this respondent, its agents, officers, or servants, either on board of or in command of said steamship Nevada, or elsewhere.

Sixth. That all and singular the premises are true.

Wherefore this respondent prays that this honorable court would be pleased to pronounce against the libel aforesaid, and to condemn the libellants in costs, and otherwise law and justice to administer in the premises.

NASH & HOLT,
*Proctors for Respondents.*

LIVERPOOL AND GREAT WESTERN STEAMSHIP COMPANY.
By WILLIAMS & GUION.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

William H. Guion, being duly sworn, says that he is one of the firm of Williams & Guion, agents of the Liverpool and Great Western Steam Company (Limited), respondents herein. That the said company is a foreign corporation, incorporated by and existing under the laws of the United Kingdom of Great Britain and Ireland, having their principal place of business in the city of Liverpool, and its officers are now absent from the southern district of New York.

15 That deponent has read the foregoing answer, and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated on information and belief, and that as to such matters he believes it to be true.

WM. H. GUION.

Sworn before me the 17th day of December, 1875.

EDW. L. OWEN,
*U. S. Commissioner for the Southern District of New York.*

District court of the United States, southern district of New York.

SERGEANT J. QUICK
*vs.*
STEAMSHIP NEVADA, &C.

SIR: Take notice that I shall apply to this court, at a stated term thereof, to be held at the court-room, in the new post-office building, in the city of New York, on the 3d day of March, 1877, at 11 o'clock in the forenoon, or as soon thereafter as counsel can be heard, for an order granting the prayer of the annexed petition.

N. Y., Feb. 27, 1877.

Very truly,

EUGENE H. LEWIS,
*Proctor for Petitioner.*

To NASH & HOLT, Esq'r's,
*Proctors for Claimant, 50 Wall St.*

16 District court of the United States, southern district of New York.

SERGEANT J. QUICK
*vs.*
STEAMSHIP NEVADA, &C.

To the honorable Samuel Blatchford, judge of the district court of the United States for the southern district of New York:

The petition of Frederick A. McKnight, of the city of Buffalo, State of New York, respectfully shows to this court:

That, as your petitioner is informed and believes, on or about the 27th day of September, 1871, a collision took place in the slip between Piers 46 and 47, New York Harbor, between the steamship Nevada and

the canal-boat Kate Green, belonging to the libellant herein, whereby the said canal-boat, with her cargo on board, was sunk, and became a total loss.

That at the time of such collision the Western Insurance Company, a corporation existing under and by virtue of the laws of the State of New York, was insurer of about eight thousand one hundred bushels of corn constituting the cargo of said canal-boat, and which had been transported by the said canal-boat from Buffalo to New York, and was to be delivered at said slip, and that said corn, by reason of said collision, became wholly lost.

That by the loss of said cargo the said insurance company became liable to pay the value of the same to the owners thereof.

That said insurance company thereafter did pay the owners of
17 the said cargo the amount of insurance upon said corn as for a total loss, and that they therefore became and were substituted in the place of said owners, and entitled to all their rights and interests therein, and claims for the destruction thereof.

And your petitioner further shows that on or about the 1st day of November, 1871, said insurance company was duly adjudicated a bankrupt by the district court of the United States for the northern district of New York.

That thereafter Sherman S. Jewett, of said city of Buffalo, was duly appointed and constituted assignee in bankruptcy of said insurance company, by an instrument of assignment bearing date the 18th day of December, 1871, and executed by Joseph L. Fairchilds, esq., the register in bankruptcy having said proceedings in bankruptcy in charge.

That on or about the 21st day of July, 1874, an order was entered in said proceedings authorizing and empowering said assignee to sell all claims, notes, accounts, and assets in his possession or under his control as such assignee, such sale to be at public auction, in the city of Buffalo, and ordering said assignee to publish a notice of such sale in the newspapers called the Buffalo Commercial Advertiser and the Buffalo Courier, twice a week for four successive weeks prior to such sale.

That thereafter said assignee duly published said notice of sale, as required by said order, and that on or about the 22d day of August, 1874, said assignee offered for sale at public auction in said city, in pursuance of said order and notice of sale duly published as aforesaid, all the rights and interests which said insurance company had in said corn and all its claims for the destruction thereof.

That your petitioner was the highest bidder at such sale for said interests and claims arising from said destruction of cargo and payment of loss therefor, and that the same were duly struck off and sold to him, and that he is now the lawful owner of the same.

18 And your petitioner further shows to the court that on the 22d day of November, 1875, the owner of said canal-boat, being the libellant herein, filed his libel in this court on behalf of himself and of your petitioner against the said steamship to recover the damages sustained by the said canal-boat and cargo by reason of the said collision, and that said suit is still pending and undecided.

Wherefore your petitioner prays that an order of this court may be entered allowing him to intervene for his interests in said suit as co-libellant, and that your petitioner may be allowed, on the trial of said cause, to introduce evidence in support of the allegations contained as well in the libel heretofore filed herein as in this petition; and that an order of reference may be entered by your petitioner to some commissioner to ascertain the damages sustained by said cargo in consequence

of said collision, and that your petitioner may be decreed such other relief as he may be entitled to, and as may be just and equitable in the premises.

EUGENE H. LEWIS,
*Proctor for Petitioner.*

NORTHERN DISTRICT OF NEW YORK, *ss:*

Frederick A. McKnight, being duly sworn, says he is the petitioner named in the foregoing petition; that he has read the same, and knows the contents thereof; that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

F. A. McKNIGHT.

Subscribed and sworn to before me this 16th day of October, 1876.
GEORGE J. SICARD,
*United States Commissioner, Northern Dist. of N. Y.*

19 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Monday, the fifth day of March, in the year of our Lord one thousand eight hundred and seventy-seven.

Present, the honorable Samuel Blatchford, district judge.

SERGEANT J. QUICK
*v.* } 26–155.
THE STEAMSHIP NEVADA, &C.

Upon reading and filing the verified petition of Frederick A. McKnight, and proof of due service of a notice of motion for an order granting the prayer of said petition on the proctors for the claimant, and after hearing Mr. Lewis in support of said motion, and there being no opposition to the same:

Now, on motion of Eugene H. Lewis, proctor for petitioner—

It is ordered that the said Frederick A. McKnight be allowed to intervene in this suit as colibellant, and that he may upon the trial of this cause introduce evidence in support of the allegations contained as well in the libel heretofore filed herein as in this petition; and that such further order of reference to ascertain damages to which said petitioner may be entitled may be entered hereafter as shall be necessary and proper.

SAM'L BLATCHFORD.

20 United States district court, southern district of New York.

SERGEANT J. QUICK
*agst.* }
THE STEAMSHIP NEVADA, &C.

*Testimony on trial before Hon. Samuel Blatchford, at New York City, June* 19, 1877.

SERGEANT J. QUICK, the libellant, being duly sworn, testified as follows:

Examined by Mr. BENEDICT:

Q. Where do you live?

A. I live at Brewerton, Onondaga County.
Q. What is your business?
A. I work at carpenter work at present.
Q. How old are you?
A. 46 in July.
Q. Do you know the canal-boat Kate Green?
A. Yes, sir.
Q. Were you the owner of her?
A. Yes, sir.
Q. How long?
A. A little over one year. I bought her in 1870—July, 1870, I think.
Q. What experience have you had as a canal-boat captain?
A. I have had some. I boated most of the time for 30 years.
Q. Were you on board of the Kate Green on the day of the sinking of her by the Nevada?
A. Yes, sir; I was.
Q. What was she loaded with?
A. Loaded with corn.
21 By the COURT: In bulk or in bags?
A. In bulk.
Q. (Showing witness paper.) Is that the bill of lading for Chicago?
A. Yes, sir; that is my signature.
(The bill of lading is offered in evidence, and marked Exhibit No. 1, June 19, 1877.)
Q. Where did you come from with that cargo?
A. From Buffalo.
Q. To where?
A. New York.
Q. What place in New York?
A. I landed at Pier 7, I think—5 or 7, East River.
Q. Did you get any order as to where the corn was to be discharged?
A. Yes, sir.
Q. From whom did you get that order?
A. Mr. James.
Q. (Showing witness paper.) Is that the order?
A. Yes, sir. I got it on the 27th Sept., 1871.
(The order, signed M. F. James & Co., is offered and read in evidence.)
Q. Did you tow your boat to Pier 47?
A. Yes, sir; I did.
Q. What tug was it that towed you?
A. It was either the Jacob or David Sinex; I think it is Jacob Sinex.
Q. How were you towed up?
A. Towed up with the tug alongside.
Q. Which side of the tug?
A. On the left-hand side of the tug, going up.
Q. What time did you arrive at the slip?
A. I think nearly three o'clock, between two and three o'clock; I could not say exactly.
Q. Will you state what the tug did with you on the arrival?
22 A. She landed me aside of the canal-boat C. H. Hart.
Q. Where was the C. H. Hart lying?
A. She was lying aside of an elevator.
Q. Do you remember the name of the elevator?
A. I think it was the Scotia.
Q. By the COURT: The C. H. Hart was between you and the Scotia?
A. Yes, sir.

Q. Where was the Scotia lying?
A. Aside of the Queen.
Q. Where was the Queen lying?
A. Lying on the lower side of Pier 47.
Q. How was the Queen lying, bow in or bow out?
A. Bow out.
Q. Whereabouts on the side of the Queen was the Scotia?
A. Farthest astern.
Q. Past the middle of the Queen, towards the stern?
A. Past the middle, yes, sir.
Q. Was there any other steamer in that slip?
A. Yes, sir; one on the upper side of Pier 46.
Q. What steamer was that?
A. That was the Nevada.
Q. Were there any vessels fastened alongside of her?
A. No, sir.
Q. Were there any other vessels than those you have mentioned fastened alongside of the Queen?
A. There was an elevator—the Metropolitan—lay to the bow of the Queen.
By the COURT: Farther toward the bow of the Queen than the Scotia?
A. Yes, sir.
Q. Farther towards the mouth of the slip?
A. Yes, sir; toward the mouth of the slip.
By the COURT: The Metropolitan was alongside of the Queen?
A. Yes, sir; they were unloading.
23 Q. Your canal-boat headed which way?
A. Headed toward the bulkhead, bow in, and the Hart the same way.
Q. Did you get any orders as you came into the slip where you were to go?
A. Some one from the Metropolitan, I think, hallooed to me to run up into the bulkhead and wait my turn for unloading. I could not say who; some one from the boat.
Q. Was there anybody on your boat but yourself?
A. Yes, sir; my whole crew was.
Q. How many was that?
A. Four.
Q. What were their names?
A. Francis H. Merritt, John M. Johnson, Adelbert J. Quick, that is my son, and myself.
Q. How old was your son?
A. He was in his 15th year.
Q. Who of those four were on deck after you came into the slip?
A. They were all on deck.
Q. When the tug-boat put you alongside of the Hart, state what you did.
A. Took out our lines—the boat lines—and fastened to the Hart.
By the COURT: Two lines to the Hart?
A. Yes, sir; a bow line and a stern line.
Q. Which did you make fast yourself?
A. My bow line.
Q. You know who made fast the other one?
A. Mr. Merritt, my steersman.
Q. What kind of lines were they?

A. They were good lines—my bow line was new. It was a line that had been in use but two days. I bought it at Troy. It was a new line when I got it—a 160-foot line.

Q. How did you make it fast?

A. I made it fast from a cleat on the bow of our boat, the left-hand side of the Green, to a cleat on the right-hand bow of the Hart.

24 Q. How was the stern line made fast?

A. That was made fast to a stern cleat on the Hart, the right hand of the Hart, from a stern cleat on the left-hand side of the Green.

By the COURT: How far was this cleat from the stern of your boat?

A. Right on the stern deck.

By the COURT: How far from the extreme stern?

A. Probably three feet from the extreme end.

Q. And the bow cleat, how far was that from the extreme end?

A. I think in the neighborhood of 9 or 10 feet. Right on her quarter deck by the bow cabin.

Q. What was the condition of your vessel as to leaking?

A. It was good; she had been just recaulked in Buffalo, and was in good condition. I paid $164 to have her recaulked—caulked wherever it was needed—deck, sides, and bottom, and the ship did not leak, would not leak an inch in 24 hours.

Q. Were you on the deck of the Hart any of the time?

A. Yes, sir; I stepped on the deck of the Hart and made the line fast.

Q. Did you see how the Hart was fastened?

A. Her stern was made fast to the elevator Scotia.

Q. And her bow?

A. Was made fast to the Queen by a line leading up on to the deck of the Queen, from the bow of the Hart. It was made fast from her bow stem.

Q. When the tug had put you alongside of the Hart, what did she do?

A. She backed out and lay right by the stern of my boat.

Q. Did you remain on the deck of your vessel after you were made fast?

A. Yes, sir.

Q. Were there any other vessels in the slip towards the bulkhead?

25 A. There were a couple of lighters up there, and I believe some coal-boats.

Q. Do you know whereabouts they lay?

A. The lighters lay right at the bulkhead, at the stern of the Nevada.

Q. Did you see the Nevada move out that afternoon?

A. Yes, sir.

Q. As you lay, after you had made fast, what was the distance between the side of your boat and the side of the Nevada?

A. I think it must have been 30 or 40 feet—40 feet probably.

Q. Was the stern of the Nevada farther in towards the bulkhead than your boat?

A. Yes, sir.

Q. How much farther in towards the bulkhead?

A. I think my bow must have been near her middle, it might have been a little astern of the middle, when I made fast to the Hart.

Q. Did you have any knowledge that the Nevada was going out that afternoon?

A. No, sir.

Q. What first attracted your attention to her moving?

A. Her wheels in motion; just as I was making my bow line fast I saw her starting.

By the COURT: What do you mean by saying "her wheels in motion"?

A. I saw the water in motion—saw the water boiling at the stern of the Nevada; the screw of the Nevada put the water in motion.

Q. Did you get your line made fully fast?

A. Yes, sir; my line was made fast.

By the COURT: That was your bow line?

A. Yes, sir; my bow line was fast when I saw her under motion.

By the COURT: You mean you got your bow-line properly fast, and it was after that when you saw the Nevada in motion?

26 A. I just got the line in place, then I looked up and saw the water in motion; that attracted my attention; then I saw she was moving.

Q. At that time had the tug left you?

A. The tug had just moved back, and lay at my stern; the tug moved back towards the river.

By the COURT: How was the stern line; which was fixed first, the bow line or the stern line?

A. Both at the same time.

By the COURT: Did you notice the stern line at that time?

A. Yes, sir.

By the COURT: It was fast, was it, to both boats?

A. Yes, sir; fast to the Hart.

By the COURT: And to your boat also?

A. Yes, sir.

Q. Go on and tell what happened.

A. She was moving out, and also her stern swinging towards us after she got under way; the commotion of the water bouncing our bows up and down; the bow line from the Hart to the Queen parted, and let us swing out, and the suction of the Nevada drew our bows over towards her, as she was swinging towards the Green.

Q. Drew your bows over towards the Nevada?

A. Yes, sir.

Q. As she was swinging towards the Green?

A. She swung out and struck the Green right near the bow cabin.

Q. What struck the Green?

A. The screw of the Nevada struck the Green; just after starting I saw a man up on the stern of the Nevada; I saw that my boat was coming into collision; I hallooed to him and told him for God's sake stop his wheel; just at that moment their hawser parted—the hawser of the Nevada.

By the COURT: Where did it run from?

A. From the ship to the dock; pretty well back.

Q. Which pier?

A. Pier 46.

By the COURT: You saw it snap?

A. I saw it break; yes, sir.

27 Q. Where did it break, on the ship or on the wharf?

A. Between the ship and the dock; I think not a great ways from the end; probably 10 or 15 feet from the end—from the shore end; the wheel did not stop at all, but she kept swinging out into the centre of the stream, breaking the side of the Green all the way through to the stern.

Q. How far away was the stern of the Nevada from you when you hallooed?

A. They were very nearly together; may be 15 or 20 feet; a short distance.

Q. How did you halloo?

A. By throwing up my hands and saying: "For God's sake stop the wheel;" to see where my boat was coming.

Q. Did you halloo loud?

A. Yes, sir; in such an emergency of course I hallooed loud.

Q. Did the Nevada stop at all?

A. No, sir; went right on out and did not stop.

Q. Did either of your lines to the Hart break?

A. No, sir.

Q. How about the stern line from the Hart to the elevator, did that break?

A. I think it did.

By the COURT: How did you know it broke?

A. Because I saw Captain Beebe of the Hart, who was up on the Queen, and he could not get on to his boat to assist his boat or our boat; he was up there at the time of the collision, and after that he came down to get on his boat, and had to pull the stern in to get on to his boat from the elevator; Captain Beebe was on the Queen at the time of the collision.

Q. How do you know he was there at the time of the collision?

A. The first I saw of him, he was pulling his stern in; he was on the elevator after the collision, pulling the stern of his boat in to the elevator, so that he could get on; then he did get on.

By the COURT: Which elevator did you see him on?

28 A. The Scotia.

Q. The one that the Hart had been fast to?

Q. Yes, sir.

By the COURT: Pulling the Hart towards him with a line?

A. Yes, sir; pulling both boats towards him; they were both lashed together.

By the COURT: When they got up, he got on to the boat?

A. Yes, sir; after that he came to help get the water out of the boat; I measured the water a minute after we struck, and there was 18 inches of water in the stern; I got three pumps going immediately.

Q. Did your boat sink?

A. Yes, sir.

Q. How long after the collision did she sink?

A. Some 25 or 30 minutes.

Q. Did you get her up to the bulkhead?

A. Yes, sir.

Q. Did this motion of the screw of the Nevada make a commotion in the waters of the slip?

A. It did; it broke the lines of a lighter; I saw that myself; that lighter lay clear up in the corner of the bulkhead; the line broke or became loose; I suppose it broke; it swung around and just cleared the bow of my boat; it swung around past the bow of my boat.

By the COURT: She was wholly adrift, was she?

A. I could not say whether the stern-line parted or not; the bow swung around.

Q. Was there any motion to your boat and the Hart?

A. Yes, sir; the bow was bounding up and down; a motion was made, and the water was black and muddy.

Q. Was your vessel raised afterwards?
A. Yes, sir.
Q. How long afterwards?
A. I think it was a week from the next Friday. On Saturday they took her over to Governor's Island. We got her up and tipped her up on her side, so that we could see what the wheel had done.
Q. Did you go over to see her at Governor's Island?
A. Yes, sir; I was over there.
Q. Who went with you?
A. My son went with me once, and Captain Dewer went with me once.
Q. Who is Captain Dewer?
A. He is superintendent of the Pier 46, with Williams and Guion.
Q. Superintendent of the line that owned the Nevada?
A. Yes, sir.
Q. Did you and he go there to look at that boat together?
A. Yes, sir; we went there in a skiff. We were towed over by one of the Navy boats—a little steam-boat.
Q. Could you see the side and bottom of the boat as she lay there?
A. Yes, sir; we saw that before we took her there. The bottom was hanging down. We raised her up. There was a strip of oak, 8 by 12, and about every three feet you could see where the wheel had struck this oak. This oak holds the head of the boat, and her sides were all drawn apart under the stern; her sides were stove in entirely.
Q. How far along the side of the boat did these marks of the screw extend?
A. Extended from her bow-cabin—about 12 feet back from her bow—clear through the stern.
Q. Was there anything said between you and Mr. Dewer as to whether it was worth while to repair the boat?
A. Yes, sir; there was.
Q. Before this had you gone to see Williams & Guion about seeing the ship?
A. Yes, sir; Mr. Williams was the man that I talked with.
Q. Did he refer you to Mr. Dewer?
A. Yes, sir.
By the COURT: How do you mean referred you to him?
A. I went to him and asked Mr. Williams to pay for my boat.
(Mr. Nash objects to any conversation with Mr. Williams.
Mr. Benedict says that he proposes to show that Mr. Williams said he would have Mr. Dewer go over to look into the matter.)
Q. What did he tell you about going to see Mr. Dewer?
A. He told me that whatever Captain Dewer said about the matter he would do. He told me to go to Pier 46 and see Captain Dewer, and whatever he said to do he would act.
Q. What passed between you and Mr. Dewer when you went to look at the boat?
A. I went and saw Mr. Dewer, and we went to the office together—Mr. Williams' office. We did not go at that time. I cannot say whether that day or the next.
Q. I am asking about the time that you and Mr. Dewer went and looked at the boat. State what was said between you and Mr. Dewer with reference to repairing the boat at that time.
A. Mr. Dewer surveyed the boat all through. The tide was out, and we could go down in it amidships and all through. When we came

up Mr. Dewer said: "I consider this boat a total wreck; she is not good for anything. We do not want to have anything to do with it. We had rather buy another boat or pay you for it, providing we are at fault."

Q. Do you know anything about the loss of the cargo; what the extent of the loss was?

A. I suppose it was a total loss.

(Objected to by Mr. Nash.)

Q. Did you see the condition of it?

A. Yes, sir; there was a very little corn got out from the cabin. When they raised it up it brought the cargo along with it—what had not dropped out.

31 Q. The break was such that when they raised it up the bottom fell out?

A. Yes, sir; when they raised it up the cargo dropped out, except that little that remained.

Q. Did you notice a hawser of the Nevada that parted—a piece hanging on the dock?

A. Yes, sir.

Q. How long did it hang there?

A. I cannot say how long.

Q. You noticed it hanging there after she had gone?

A. Yes, sir; also another end on the ship that hung there; I didn't see them haul that in.

Q. What did the tug do after the Nevada went out?

A. She saw the ship coming, but she could not get into us; he could not assist us.

Q. What did he do?

A. He remained there until she went out past him; then he came up to the stern of my boat, but he could not assist me any; he went for the John Fuller with a steam-pump; he went around for her immediately.

Q. And brought her there?

A. Yes, sir; sent her there, and he went on about his business.

Cross-examined by Mr. NASH:

Q. Did you call yourself the captain or master of this canal-boat?

A. Yes, sir; captain and owner.

Q. Had you ever been to this slip before?

A. No, sir; I had not, not to my recollection.

Q. How long before this had you been to New York?

A. Probably 30 or 35 days' time, to make one trip around.

Q. You had been before with the Kate Green to New York?

A. Yes, sir.

32 Q. Where did you unload then?

A. At Trinity Slip; unloaded boats consigned to Mr. James.

Q. On this day, when you got the order, where did the tug take you up—whereabouts?

A. It took me from Pier 6 or 7 East River and brought me around up.

Q. You say you were lashed to the left-hand side of the tug going up the North River?

A. Yes, sir.

Q. What were you doing on the way up there?

A. I was on the bow of my boat, also on the tug.

Q. Passing from one boat to the other?

A. No, sir; I do not know as I passed from one boat to the other; I might have stopped and talked with the captain as usual, and gave him my orders.

Q. The tug was between you and the shore all the way up?

A. Yes, sir; between me and the shore.

Q. And the tug took your boat into the slip?

A. Yes, sir.

Q. How far did it go into the slip with your boat before it cast off?

A. Right around to the Hart, and landed me all safe and right.

Q. Up to the time that she took you to the Hart had you noticed the Nevada?

A. I noticed there was a boat lying there.

Q. Had you noticed her before you made fast to the Hart?

A. No, sir; not particularly; I knew there was a ship lying there.

Q. You did not notice whether steam was up?

A. No, sir; had no warning whatever.

Q. You did not take notice whether steam was up or not?

A. No, sir; I did not know there was steam at all.

Q. You did not know it was a steamship?

A. Yes, sir; I knew it was a steamship, but I did not not know it was fired up to go.

Q. Did you hear bells?

33 A. I heard bells, but I did not notice any from that ship; if I did I should not have let the tug let go of me; they could have avoided it, and kept me away.

Q. Did you hear steam-whistles?

A. No, sir.

Q. Did you notice a crowd of persons on her decks?

A. There are more or less people around such ships.

Q. Did you notice any particular crowd on the Nevada before you made fast?

A. Nothing more than usual; there are usually a good many around such steamships.

Q. When she started you were surprised that she was going to sail that afternoon, were you?

A. I do not know as I was very much surprised; the first thing I knew she was under motion—under way.

Q. I understood you to say that as you came into the slip somebody from the Metropolitan elevator hallooed to you to run up into the slip and await your turn to unload?

A. Some one hallooed to us, I think it was on the Metropolitan; I may be mistaken in the names of those elevators, but I think not; I think the Metropolitan was the first; I had orders from some one there to run up into the bulkhead and wait my turn.

Q. What made you make fast to the Hart particularly?

A. That was the usual place of unloading; she was waiting her turn, and that was a good place.

Q. Why did you not make fast to the boat that was fastened to the Metropolitan?

A. Because I had orders to run up further.

Q. Did you have any other orders except those you have spoken of?

A. I do not know as I did.

Q. How near unloaded was the Hart at that time; did you notice?

34 A. She had not commenced unloading.

Q. You proposed to lay there until the Hart finished unloading?

A. No, sir; she was lying there waiting her turn to unload.
Q. This was merely a temporary stoppage?
A. No, sir.
Q. He did not mean to stay there, did he?
A. Stay there until he had to go away, and then he would have to get a new berth for himself.
Q. He was there ready to unload, was he?
A. He was waiting; they were not ready for him.
Q. Was there anything between him and the Queen?
A. The elevator; the Hart was right adjoining the elevator; they were taking out of the stern of another boat; the Hart was waiting for this boat to get unloaded; then she would drop back, and I would take her position.
Q. What was the name of that boat?
A. It was a canal-boat; I could not tell; she and the Hart lay with the sterns together.
Q. They were unloading from her?
A. Yes, sir.
Q. That canal-boat lay further up the slip, towards the bulkhead, than yours?
A. No, sir; lay the other way.
Q. Towards the river?
A. Yes, sir; that one that was unloading.
Q. What was there between your boat and the bulkhead?
A. There were some boats lying up in there; those lighters and some other boats; I could not say what.
Q. How far was it from where you stopped up to the bulkhead?
A. I think we ran up two-thirds of the distance, or more.
35 Q. Can you give any estimate of about how many feet it was from your bow to the bulkhead after you were made fast?
A. It might have been 150 feet, or 100.
Q. The Queen lay up against the pier, didn't she?
A. Yes, sir.
Q. Was there anything between the stern of the Queen and the bulkhead?
A. I think there were some small boats in there.
Q. What was to hinder your going up to make fast to the bulkhead or the pier?
A. The position of those boats lying in there; I supposed it was a secure place by the Hart.
Q. You stopped along side of the Hart because that was the most convenient?
A. I thought it was secure.
Q. Secure from what? What danger did you apprehend?
A. From any danger.
Q. Did you apprehend any danger of any kind?
A. Not at all; no, sir; I did not apprehend any danger until I saw the Nevada swinging toward us; I knew my lines were good and sufficient.
Q. Did you ask permission to make fast to the Hart?
A. No, sir; that is not customary.
Q. Did you make fast both your lines?
A. I made my bow line fast and my steersman the stern line.
Q. Did any one from the Hart assist you?
A. No, sir.

Q. You and your steersman went on board of the Hart, and whatever was done about making fast was done by you and by him?

A. Yes, sir.

Q. Did you notice at the time how the Hart was fastened, or did you make that out afterwards?

A. I would see that he had a line there; I would not make fast to a boat that was lying loose in the basin.

Q. Before you made fast did you notice how the Hart was fastened?

36 A. I noticed he had lines out; he could not lie there without lines.

Q. That was all you knew about it, that you supposed he had lines because he could not lie there without them?

A. Yes, sir; I noticed that he had lines out.

Q. Did you notice, before the Nevada started, that his bow line went across the elevator and was made fast to the Queen?

A. I could not say that I noticed it in particular; I know that he had lines there; the bow could not lie there without lines out.

Q. After you saw the danger of collision you say you spoke to a man on the Nevada?

A. Yes, sir.

Q. What was he, a passenger or a sailor, or what?

A. Some man giving orders.

Q. What did you ask him to do?

A. To stop the wheel for God's sake; to see where we were coming.

Q. You meant stop the screw?

A. Yes, sir; I supposed he could stop it with a little bell.

Q. You supposed so; did you know anything about it?

A. No, sir.

Q. Did you ever go aboard of the Nevada?

A. No, sir.

Q. Did you ever see it before?

A. I think so.

Q. Did you ever see that man before?

A. Not that I know of; he appeared to be giving some orders about something.

Q. You say that one of the lines of the Nevada broke?

A. Yes, sir; a hawser from the stern to the dock; she was in motion; the line was out; all at once it came up like a string and snapped.

Q. Had you noticed at that time anything about the state of the tide?

A. The tide was up pretty well, coming in.

37 Q. The tide was coming in as you came up the river, was it?

A. Yes, sir.

Q. How long did the tug lie between you and the Nevada, after putting you against the Hart?

A. It didn't lie there; I gave him my receipt to get his pay when we came up; I stepped off and was making fast when he backed out.

Q. Where were you as you and the tug came into the slip—where were you personally?

A. On the bow.

Q. Of your own boat?

A. Yes, sir.

Q. Were you getting your line ready, or what were you doing?

A. I was standing on the bow, and received the order from this man to run up into the bulkhead.

Q. Did you have any other conversation or talk with anybody connected with the Queen, or any of those elevators, except what you have stated?

A. No, sir; no talk that I remember of, except that I was going to take my load to the Queen.

Q. Whom did you tell that to?

A. To a tug captain.

Q. That was on the way up?

A. Yes, sir.

Q. When you got to where the Queen lay whom did you first have a talk with?

A. I had a good deal to do; I don't remember of talking to anybody in particular.

Q. How did you find out where you were to go in that slip?

A. We ascertained; I do not know but the captain of the tug ascertained that that was the Queen and we hallooed, or they hallooed to us to run up into the bulkhead.

Q. Whom did you halloo to?

A. They hallooed to us to run up there; I cannot say whether the captain of the tug knew or not; he ran right in there.

38 Q. All the talk that took place between you and any of these other people that were engaged about the Queen was the order to run up into the slip and wait your turn?

A. Yes, sir; some one hallooed there to run up into the slip and wait our turn.

Q. Was that all that took place between you and anybody else that was engaged on the Queen?

A. I do not remember of any one talking with me.

Q. Did you know the name of that boat that lay against the Metropolitan elevator?

A. I did not know the name of either of those boats, only the Hart and my own.

Q. Did you notice how near unloaded this outside boat was?

A. No, sir.

Q. Why did not you stop and unload at that elevator?

A. Because we had orders to run up in the slip and wait our turn.

Q. After the Nevada started, you say that the suction of the screw began to pull your boat towards the Nevada?

A. The commotion of the water going up and down got our bows all in motion; her stern had just got by, and her stern being very close to us we did not have to swing but very little before she struck us.

Q. Had the suction of the water operated at all upon your vessel before the Nevada's stern got by?

A. It must, yes, sir; going up and down that way, the suction of that wheel would draw it.

Q. I want you to tell me when the line parted which ran from the Hart to the Queen?

A. It parted just before she struck us.

Q. Had the stern of the Nevada got past your boat before that line parted?

A. It just parted and she struck us about 12 feet back of the bow.

Q. I understand you to say that after you had made fast to
39 the Hart, and before the Nevada started, there was about 30 or 40 feet between you and the Nevada.

A. Yes, sir; when she lay straight, if she lay straight.

Q. You were with the bow in towards the bulkhead?

A. Yes, sir.

Q. Her stern was *how* much farther in towards the bulkhead than your bow?

A. Our bow lay about the middle or a little aft of the center.

Q. Have you any idea how long the Nevada was?

A. I think something over 300 feet.

Q. Did you ever see one of those steamships go out of a slip before?

A. Yes, sir.

Q. When?

A. Several times, I could not tell just when.

Q. Have you ever been in a slip with a canal-boat when such a steamer went out?

A. I cannot say that I have, right in the slip at the time of departing, but yet I might.

Q. You have no recollection of it?

A. No particular incident, no.

Q. Did not you, before you made fast, hear any caution from anybody about the boat's going out?

A. If I had, I would not have had the captain of the tug let go of me, or he would not have let go if he had known it.

Q. What was the name of the captain of the tug?

A. His name was Charles Gates.

Q. Neither of your lines parted, I understand?

A. No, sir.

Q. How many trips had you made since you had the vessel overhauled in Buffalo?

A. That was the first trip; I have the bill of $164.

Redirect examination by Mr. BENEDICT:

40 Q. Did you examine that line of the Hart afterwards that parted?

A. Yes, sir.

Q. When?

A. I helped to splice it that night.

Q. What was the size of the line?

A. A large bow line.

Q. What was its condition?

A. It was a good line.

Q. What was the size of your lines?

A. I think my bow lines was about 6 inches—may be not but 5—round, new.

Q. The stern line?

A. About the same size.

Q. How was this line of the Hart as to size?

A. That was larger, that was a large bow line.

Q. How wide is your boat?

A. I think 17 feet 4 inches.

Q. And the Hart the same?

A. Supposed to be.

Q. Do you know how wide the elevator was?

A. No, sir, I do not; a little wider, I think, than common canal-boats.

This man whom you heard giving orders on the Nevada, and whom you hailed, whereabouts was he standing?

A. Close to the railing on the stern. I could see him as plainly as I see you.

By the COURT: How was he dressed?

A. I could not say as to that; I think dark-colored clothes.

Q. Did you see any signs of a uniform, cap or gold lace?

A. I think he had a cap; he appeared to be making some motion.

By the COURT: You say he was giving orders, what do you mean; was he talking to somebody on the deck or was he hallooing at you?

A. No, sir; not hallooing at me.

By the COURT: What do you mean by giving orders.

41 A. I saw him throwing up his hands, or doing something like that, as though he was giving orders.

By the COURT. He was gesticulating and giving orders?

A. I could not say.

By the COURT. What did he say?

A. I could not say; he appeared to be in command, and moving about doing something.

Q. Can you give the words of the order that you received from this man on the elevator, as to where you were to go?

A. To run up in towards the bulkhead and wait our turn. I knew we had no business to stop aside of the boat unloading at the elevator.

Q. Did you pick out this place alongside of the Hart to land, or did the tug?

A. That was where the tug landed us.

Q. Did you tell the tug to land you there, or did he tell you that he would land you there?

A. I could not say as to that, but we supposed it was a proper place to lie. He would not have landed me in an unsafe place.

Recross-examination by Mr. NASH:

Q. The steamer Queen was a good deal higher up than the elevator, was she not?

A. Higher than the deck of the elevator; yes, sir.

Q. About how much higher was her deck than the elevator Scotia?

A. I could not say; 12 feet perhaps.

Q. The Queen was a large steamer, wasn't she?

A. Yes, sir; larger than the Nevada, I think.

Q. Were you there when the Queen sailed?

A. I do not remember.

Q. When you were ordered to unload into the Queen, did you know how long it was before she was to sail?

A. No, sir; I did not.

Q. This line that parted running from the Hart across the elevator; where was it made fast to the Queen, on the deck of the Queen?

42 A. It did not run across the elevator, but from the bow of the Hart on to the Queen. I think it was made fast to a loop-hole. I do not know; it was made fast on to her deck somewhere.

FRANCIS MERRITT, a witness for libellant, examined de bene esse before James H. Gilbert, U. S. circuit court commissioner, at New York City, on November 11, 1876, having been duly sworn, testified follows:

I live in the town of Clay, Onandaga County, New York; I don't expect to remain in this district long; I am expecting to go every day; I am a farmer by occupation; in the fall of 1871 I was a boatman; I was on the Kate Green; she was a round-bowed, square-sterned canal-boat; she ran between Buffalo and New York; I was steersman on her. On the 27th of September, 1871, I was here in New York with the boat; she had a cargo aboard of corn; we had reached New York before that day; on the 27th we went up to the slip, between Piers 46 and 47, North

River, to unload; we were going to unload into the steamship Queen; when we arrived there the canal-boat C. H. Hart was in the slip, and another canal-boat, the name of which I don't remember, and the two lighters and the steamship Nevada; the Nevada was lying on the north side of Pier 46; the steamship Queen was there also; we lay on the south side of Pier 47, with her stern toward the bulkhead; the Nevada's stern was towards the bulkhead; the C. H. Hart lay at the stern of the boat; that and elevator was unloading into the Queen; the elevator lay alongside of the Queen, between her and the canal-boat; the lighters were lying at the bulkhead; the Kate Green went alongside of the C. H. Hart; she was brought there by a tugboat, made fast to her alongside; we made the Kate Green fast to the C. H. Hart by two lines; I made the one fast; Captain Quick made the other fast; made the stern line fast; it was a good line, a new line; what we term new
43 line; it had been used one trip; the size commonly used between 1¾ inches and 2 inches in diameter; I made the stern line fast to a cleat on the deck of the C. H. Hart; the Kate Green had a traveling-ring on her gunwale, and the line went through that and into a cleat on her stern deck; I did not fasten it to the Kate Green; it was already fastened; there was a loop in its end which passed over the cleat, and the other end was taken through the ring; I saw Capt. Quick get off with the bow line; I didn't see him fasten it; it was a good line; the Kate Green lay low in towards the bulkhead.

I saw the Nevada proceed to sea a very short time after we got there, it might have been five minutes; I saw no preparations for her going to sea; no warning was given, no bell or whistle was sounded, no warning was given by word of mouth; that is, no warning was given that I heard; I became aware of the departure of the steamer by the motion of the steamer and her stern swinging toward us; I didn't see the wheel; I saw the water disturbed by it; I noticed a man on the stern of the Nevada; I couldn't say whether he was on the cabin or on the deck; the suction of the water caused by the Nevada's wheel caused the bow line of the C. H. Hart to break.

(Objected to.)

All I mean to say is, that the line broke; I knew the bow line broke; I won't be positive about the stern line.

We then were drawn under the stern of the Nevada; I was led to suppose this was caused by the motion of the water at the Nevada's screw; prior to that the Nevada's stern was farther back in the slip than the Kate Green; our bow swung over to the Nevada's stern; we didn't go over broadside on the Nevada's stern; swung away from the pier towards the middle of the slip in going out.

44 At the time the Nevada started there was a large hawser running from the Nevada to the deck that was fast to the deck, and broke; it broke soon after the Nevada started her 'crew; I could see that she had changed her position when it broke; her stern was well towards the middle of the slip when it broke; I couldn't say about her bow; my attention was not drawn that way; I can't say whether her bow also swung out.

When we were drawn under the Nevada's stern, her screw struck us and caused us to sink. It struck us several times; the first time was just back of the bow cabin on the bottom of the boat; the Nevada went on; we were kept under her stern until she had cleared our whole length.

The lines of the lighters broke, or their moorings gave way as the Nevada passed out of the slip, and they were floating around every

which way; I saw them when we were going into the slip; they were lying at the bulkhead; I don't know whether they were moored.

After the Nevada passed out, the Kate Green sank; that was about 20 or or 35 minutes after she was struck; she didn't sink where the Nevada left us; the tugboat took us as near the bulkhead as it could get us; it took us near enough to get a line on to the dock; she sank there; before the boat sank we got the principal furniture out of the cabin and got the horses off; we saved no cargo.

I don't remember how the C. H. Hart was fastened.

Q. What is your best impression?

(Objected to.)

A. I think the Hart's bow line was made fast to the Queen; the Hart lay bow towards the bulkhead; there were some men on the steamship Queen at this time, and the one on the Nevada I spoke of; that is all I recollect; on my boat were Captain Quick and his son and myself, and John Johnson and my wife, and a little boy; I think the
45 tide was coming in at that time, for the reason that after the Kate Green had sunk she was out of sight, and when the tide went out we could see her bow. I remained in New York after the accident about a week or ten days; I visited the ship occasionally; they were attempting to get her up then; they had a couple of flat-boats there, scows.

Cross-examination:

I had been a boatman ever since the canal opened that spring; I had driven some on the canal before that, and I have boated it more or less every season since, until this season. I should think those piers were about 500 feet long; the Nevada didn't lie the whole length of the pier; there was some space at her bow and stern; I can't say how much; her bow was nearer the end than her stern was to the bulkhead. I should think the Queen was nearly as long as the Nevada, may be longer; I don't recollect which was nearest to the bulkhead; I think some other boat *boat* lay between the Queen and the bulkhead of Pier 47; the elevator lay alongside; I think no part of it lapped over; it wasn't as long as the Queen; there were two elevators along side the Queen, one at the stern hatchway and one at the bow hatchway; we went alongside the canal-boat attached to the elevator, at the stern hatchway of the Queen; I don't remember whether the canal-boat this elevator was unloading lapped over the elevator or not; I think she did; the boat she was unloading lay alongside the elevator, and the C. H. Hart also lay alongside the elevator; the Kate Green lay along side the Hart, and did not lay nearer the bulkhead than the Hart; she could not overlap the Hart much, not more than a foot or two, because they were the same length, and the bow line of the Kate Green was made fast to the bow of the Hart, and her stern line to the stern of the Hart. A traveling-ring is a ring made to fasten lines to,
46 putting the line through the ring prevents a strain and prevents the line from having too much play.

I got on the Hart to fasten the line to the cleat there. I did not examine the lines with which the Hart was fastened.

The tugboat that brought us in did not go out before we got fast to the Hart.

I don't think the tugboat had got out of the pier before the Nevada started.

I think the Nevada stopped her headway for a second or so, at the time her hawser broke. That is, the strain of the hawser, while it was

breaking, checked her headway. I saw that line break. The hawser was fastened on the Nevada on the side next the pier, pretty well forward between the stern and amidships, I thought, because her stern swung out. I attributed the fact that the Nevada's stern swung out to the fact that her hawser was fastened somewhere forward to her stern. The deck of the Nevada was about 18 feet higher than our deck. I could see the line break because we were under the stern of the Nevada and the line ran to the dock where I could see it. The line didn't break until after the Nevada had struck us once or twice, I should think.

The Nevada's stern was a considerable distance from the pier when the line parted; it may have been 20 feet or more—perhaps 40. I didn't see how far her bow was off from the pier. I could see that the ship lay around so that her stern was farther from the pier than the bow. I don't know what prevented her from running into Pier 46 as she went out; nothing occurred to prevent her that I saw.

I examined the lines by which the Hart was fastened; I examined them after the collision. The bow line was nearly three inches, if not quite, in diameter; it was a larger line than ours. I saw it was broken. I didn't see any defect to cause it to break. It was what I call a good line; I didn't see any defect in the line.

47 From my experience as a boatman, I should think a line that parted in that way from the suction of the screw of a steamer was a good line. I think any good canal-boat line of that size would be likely to part from the suction of a steamer going out in that way.

It is the custom of canal-boatmen to use more than the bow and stern lines, when lying at a pier where a steamer is lying. We use a breast-line, and generally double the bow and stern lines.

I can't say how long it was from the time the Nevada started until she struck us. It wasn't a very long period—a few minutes.

Canal-boatmen usually carry fenders, to prevent injury from another boat hitting them; they generally put them out between their boats and the docks, or between their boats and other boats.

I don't remember how the boat the elevator was unloading was fastened, or how the elevator was fastened; neither the canal-boat nor the elevator broke loose.

I presume it would have been better for the Hart to have fastened to the elevator, instead of by a long line to the Queen; but she couldn't, for the other boat lay alongside the elevator, and they don't usually allow a boat to fasten to a boat that is being unloaded, because she would be in the way of the boat unloading. The Hart couldn't fasten to the elevator, because it is not long enough to receive two boats alongside, bow and stern, at the same time. The line from one end led to the elevator, and the line from the other would have to be fastened at such an angle as would make it less safe than if fastened to the Queen.

I was on deck of the Kate Green from the time we got in until the Nevada started; I didn't notice but one man on the Nevada; that is my present recollection; I didn't hear her blow a whistle as she started out; I don't recollect seeing anybody about the dock where the Nevada had been lying; I suppose she was moored to the dock when we
48 went in; I didn't see anybody unmooring her by the other lines; I don't doubt that somebody unmoored her other lines.

I don't remember what part of the line between the Hart and the Queen parted; it parted somewhere between the two vessels.

I don't remember looking, when we came into the pier, to see if the Nevada had steam up.

I know that there is danger to a canal-boat lying in a slip that a steam-vessel is leaving unless it be securely moored.

Q. Is not this danger well known to canal-boatmen, and do not they usually take precaution against it?

(Objected to.)

A. Yes.

Redirect:

I was on the deck of the Kate Green as I have stated, except the time when I was on the Hart, making the line fast; if the Hart bow line had been fastened to the stern of the elevator, instead of to the Queen, it would have been longer, I think, and I think it would have been more likely to break.

Q. Is it usual or not for canal-boats to be alongside of elevators lapped in that way—in the way the Hart and the other canal-boat of which you do not know the name were?

(Objected to.)

A. I believe it is.

Q. From your experience as canal-boatman, state what is the custom of a steamer about to sail in regard to giving warnings.

(Objected to.)

49 A. I believe they send a man around to warn the other boats personally, and have a lookout stationed.

Q. Have you had any personal experience of this to justify your belief as stated?

(Objected to.)

A. Yes, sir.

Q. State what it was?

(Objected to.)

A. I was on board a canal-boat once lying at the end of one of the piers on the North River, and a steamship was about to sail; it was the Spain, I think, and they sent a man from the steamship to warn us to move out of the way; we didn't lap by the end of the pier; we stopped loading and moved; we were not in the way of the steamer; we were not in front of her; our stern lay inside of the pier; the man told us we would have to move, or the motion of the water might break us loose, or the wheel strike us when she went out.

A canal-boat fender would not protect her from a steamer; if we had had fenders out when the Nevada struck us, they would not have prevented the injury.

Q. In stating what you have about the breast lines and double lines used by canal-boatmen, did you mean to say that such lines are used unless there is unusual commotion to be expected?

(Objected to.)

A. It is customary to double the lines when moving at docks and along the canal.

Q. Take the case of an ordinary steamer going out of a slip, in the way that steamers usually go out of a slip, is it necessary to have these quadruple lines?

A. Yes.

50 Q. What was the commotion in the water you have spoken of caused by?

A. I suppose it was caused by the Nevada's screw.

Q. From your experience, do you think it was greater resulting as it did in this case, the steamer having stopped her headway, and the stern of the steamer swinging from the dock, than would result if the steamer passed out of the slip in straight line?

(Objected to.)

A. Yes; at the time of the collision, Captain Quick said something.

Q. What?

(Objected to.)

A. He told the man at the stern of the Nevada to stop the wheel for God's sake, that he was sinking him.

Recross:

The Kate Green had been lying at Coenties Slip before she went up to Pier 47; I didn't know before we went up there that there were other canal-boats waiting to be unloaded.

RUDOLPH STUELER, called by libellant, having been duly sworn, testified as follows:

Naval architect for myself and employed by the United States; know slip between piers 46 and 47, North River; measured it two months ago; measured the steamship, the Queen; she was lying at the south side of 47; afterwards made this chart according to measurement I made.

Length of 47, 587 feet; width of slip between 46 and 47, 206½ feet at bulkhead.

The steamer, the Queen, 383 feet on deck, from end of forecastle deck forward to taffrail aft.

Breadth of beam on deck, 42½ feet at widest, about midships.

51 The Queen, assuming her to be at gangways for hatches, her bowsprit would be about 10 feet inside of end of pier.

Drawing is 1–16 inch to a foot. Canal-boat, 97 feet long and 17 feet beam.

As to position of Nevada at pier, one is in full lines and the other in dotted lines; the full lines show where she would be with pier, as it is now.

I measured the elevators also. Everything on drawing I measured, and it is on same scale.

I measured an elevator said to be same size as Scotia.

Took dimensions of Nevada from French Lloyds and English Lloyds.

Cross-examined:

Part of the slip has been filled in since accident. This drawing shows it as it was at time of accident.

Drawing marked No. 1.

SAMUEL BEEBE, a witness for libellant, examined under a commission before A. J. Northrup, esq., commissioner at Syracuse, N. Y., on May 11th, 1875, having been duly sworn, testified as follows:

Direct examination:

Q. What is your name, age, occupation, and residence?

A. My name is Samuel Beebe; my age is 47 past; my occupation, farming, and my residence at Cleveland, Oswego County, State of New York.

Q. Were you or were you not master of a canal-boat during the month of September, 1871; and, if so, what was the name of your boat, and where were you with your boat on the afternoon of the 27th day of that month?

A. I was; and the name of the boat was C. H. Hart, hailing from Syracuse, and on the afternoon of the 27th September, 1871, I

52 was with the boat between piers 46 and 47, North River, New York Harbor.

Q. If you answer that you were lying in the slip between piers 46 and 47, North River, New York Harbor, state whether or not you saw the canal-boat Kate Green on that day in the same slip.

A. I did see canal-boat Kate Green on that day in the same slip.

Q. If you answer the last interrogatory affirmatively, state whether or not you saw the Kate Green on her entrance to the slip; and, if so, state where she went on entering the slip, and what measures were taken, if any, and by whom, to make her fast, and to what, and in what manner, and if by a line or lines, by how many lines she was made fast.

A. I saw the Kate Green on her entrance to the slip; she landed by the side of my boat; the tug landed her there. The captain and steersman of the Kate Green made her fast with the bow line and stern line from both ends of their boats to both ends of my boat. The stern of their boat was made fast to the stern of mine, and their bow to my bow by these two lines.

Q. If you answer that the Kate Green was made fast to your own boat, the C. H. Hart, state the position which your boat occupied in the slip, and state whether or not there were any other boat or boats in the slip, and, if so, describe their position or positions; and if the Hart was made fast to any of them, state to which one or ones, and by whom she was so made fast; also describe particularly and minutely the manner in which the Hart was so made fast; if by a line or lines, state by how many, how long in use, and how large it or they were, and whether fastened to the Hart at bow or stern, or either, or both.

A. The steamship Queen lay next to and on the south side of Pier 47; the elevator alongside the steamship Queen; my boat beside the elevator; the Kate Green by the side of my boat, the Hart; my
53 boat made fast with two permanent lines, one from the bow and one from the stern; the stern line fast to the elevator; the bow line to the steamship Queen; the bow line about 7 to 7½ inches in circumference; the stern line from 5 to 5½ inches in circumference. These two lines had been in use about six days. Both of my lines were made fast to my boat by rings stationary in the boat. I made the bow line fast, and my son, Levi Beebe, made the stern line fast. The Kate Green came in outside of my boat; there was another canal-boat in the slip at the stern of my boat that lay beside the Queen. There were also some lighters—two, I think—at the bulkhead between piers 46 and 47, and the steamship Nevada lay in the same slip, on the north side of Pier 46.

Q. If you have answered that a line from the Hart's bow was made fast to the steamship Queen, state, if you have not already done so, whereabouts in the slip the Queen lay, and to what part of the Queen the line was fast; and if you answer that it was fast to the Queen's deck, state how much higher, if any, the deck of the Queen lay than the deck of the Hart, and how much space there was, if any, between the Hart and the Queen.

A. The Queen lay nearly out to the north of the slip, her bow, I should think, about 20 or 30 feet from the outer end of the pier, and her stern lying toward the bulkhead. I should think that my line, my bow line, was fastened to the Queen about two-thirds from her bow to her stern. It was fastened to her deck; should think the deck of the Queen lay from 10 to 11 feet higher than the deck of the Hart; there

was from 20 to 25 feet, I should think, space between the Hart and the Queen, in which space was the elevator that I have mentioned.

Q. If you have answered that a line from the Hart's stern was fastened to the elevator lying between the Hart and the Queen, state to what part of the elevator the line was fastened; and if you answer that it was fastened to the deck of the elevator, state how much higher, if any, the deck of the elevator lay than the deck of the Hart.

54 A. The line from the Hart to the elevator was fastened, I think, two-thirds of the way from the bow to the stern of the elevator, and it was fastened to the deck of the elevator. I should not think the deck of the elevator lay any higher than the deck of the Hart.

Q. State whether or not you saw the steamship Nevada in the slip at the time of the entrance of the Kate Green; and, if so, where she lay; and also, whether or not you saw her leave the dock and proceed to sea. If you did, state where you were standing at the time, and how long you had been in the slip at the time she started.

A. I saw the steamship Nevada in the slip at the time of the entrance of the Kate Green. She laid up into bulkhead on the north side of Pier 46, her whole length further into the slip than the Hart or the Kate Green. I saw her leave the dock and proceed to sea; I was standing on the bulwarks or railing of the steamship Queen at the time of the Nevada's departure; I had been in the slip from an hour to an hour and a half, I should think.

Q. State whether or not, during the time that you were in the slip, the Nevada gave any warning to the different boats lying in the slip that she was about to start, and whether or not she gave any warning at the time of starting.

A. I did not hear any warning given by the Nevada that she was about to start, and saw no warning; just as she did start she gave one blow or toot upon the whistle, and started immediately.

Q. State what, if anything, occurred to your boat Hart and to her lines after the Nevada started her propeller.

A. After the Nevada started, my bow line parted; whether my stern line parted or rendered around the cleat, I could not tell, but I think it parted; that left us afloat or adrift in the slip, with the Kate Green at the side and fastened to my boat.

Q. If you answer that after the Nevada started her propeller
55 the lines of the Hart by which she was made fast to the Queen, and the elevator, or either of them, if she was so made fast, broke, state whether or not you subsequently saw the Hart and the Kate Green swing towards the Nevada; and, if so, whether or not you saw a collision between the Kate Green and the Nevada; and state whether or not the lines by which the Kate Green was made fast to the Hart also broke; if you answer that you saw a collision between the Kate Green and the Nevada, state whether or not you saw the stern of the Nevada swing out from the dock towards the middle of the slip.

A. I saw the Hart and the Kate Green swing towards the Nevada, and I saw a collision between the Kate Green and the Nevada; the lines which made the Kate Green fast to the Hart did not break; I saw the stern of the Nevada swing out from the dock towards the middle of the slip.

Q. State what, if anything, occurred to the Kate Green after the collision, and what assistance, if any, you rendered her?

A. The Kate Green sunk after the collision—from twenty to twenty-five minutes after; I stood on the steamship Queen, and saw what was going on; I ran right down on the elevator, told my man to throw me

a line; he did it; I made the end of my line fast to the elevator; I told my men to pull in on the line as fast as they could; they did so; it being flood tide, the boats came up readily to the elevator; I then jumped right on to my boat; I told the captain of the Kate Green to save his horses, whatever he did, for he would sink immediately, or very soon, at any rate; he says to me, "What will I do with them?" I says to him, "You get your furniture out of the cabin, and I'll take care of the horses." He went to work, getting his furniture out of the cabin; myself and my men went to getting his horses out of the boat, and putting them into mine, and we got them into my boat, into my horse cabin;
56 and we also got most of the furniture on; about that time the wrecker came into the slip; they shoved the Kate Green up to bulkhead, and when she got there she sunk out of sight; I took the captain and his crew on to my boat and kept them over night.

Q. State the length and breadth of your boat, the Hart, and whether or not, at the time spoken of heretofore, she was loaded or unloaded.

A. My boat, the Hart, was 96 feet long, 17 feet and 4 inches broad, and was laden with corn—fully loaded.

Q. Do you know of any other matter or thing material or necessary, or that may tend to the benefit or advantage of the libellant in this cause; if yea, state the same as fully and particularly as if you were thereunto specially interrogated?

A. I do not, except that the steamship Nevada had a hawser running from the stern out to Pier 46, and when she started her stern swung from the pier; the Kate Green at that time was under the counter of the ship Nevada; the captain of the Kate Green hallooed to the man on the Nevada—standing on the stern of the Nevada—"For God's sake, stop that wheel!" and about that time the hawser parted, and she proceeded to sea, and did not stop; I don't know anything else.

Cross-examination:

Q. What is your present post-office address? How long is it since you have been in New York? Are you now the master of the C. H. Hart? If not, how long since you held that position?

A. My present post-office address is Cleveland, Oswego County, N. Y.; I was last in New York two years ago last September; I am not now the master of the C. H. Hart; I sold her in July, 1872; I was master of her until then, and have not been since.

Q. Who was the owner of the C. H. Hart in September, 1871? If your boat was consigned to parties in New York, state to whom she was so consigned, and with what she was laden. What were
57 you doing in the slip between piers 46 and 47, North River, New York, on Sept. 27, 1871, if it is a fact that you were there? How long had you been there? What were you personally doing or attending to during that day? Were you on the deck or in the hold of your boat? How many men had you with you employed on the C. H. Hart, if any? Where were they employed during Sept. 27, 1871, and give the stations and duties of each of them? Give their names and present addresses, if you know.

A. I was her master in September, 1871; she was consigned to parties in New York, and I think to George Jennison, in Broad street, and was laden with corn; I went to the slip between piers 46 and 47 on Sept. 27, 1871, to discharge my cargo, and was waiting for the elevator to unload me; I went in early that afternoon; I was personally attending to my boat matters, the ordinary duties; I was on my boat, on deck, a[illegible] that day until I landed; then I made my boat fast, and was then

most of the time on the steamship Queen until the Nevada started. After this collision happened, I assisted as I have stated; afterward I unloaded my boat; that night I had three men on the Hart besides myself; the whole of them were on the deck of the Hart at the time of the collision; after the collision they assisted in saving the horses and property on the Kate Green; their names were Peter Beebe, present post-office address, Camden, Oneida County, N. Y., steersman at that time; Levi Beebe, present post-office address, Cleveland, Oswego County, N. Y., steersman at that time; Kinsley McClinty (I don't know how to spell the name); I do not know his post-office address; he was a driver; that is all; they were all employed with me on that day on the Hart.

Q. How long did your boat remain in the said slip, giving the hours when she came and when she left? How long had she been there when the Kate Green came into the slip? Did you see her when
58 she came in? Was she towed into the slip? If she was so towed in, give the name of the boat that towed her in, if you know. State, if you know, where she came from. Was she laden or not; if yea, with what was she laden? Where were you when the Kate Green came in sight, and did you remain in that position until she came to and passed up into the slip?

A. My boat came into the slip between 12 o'clock noon and 2 o'clock p. m., and remained until the next day about the same hour; she had been there from half to three-quarters of an hour when the Kate Green came in; I saw her when she came in; she was towed into the slip; I don't know the name of the boat that towed her in; I could not state where she came from; she was laden with corn; when the Kate Green came in sight I stood on the bulwarks of the Queen, and I remained in that position; she passed into the slip.

Q. State particularly what and the manner in which your boat was made fast. Who made her fast? How many and what kind of lines were used? To whom did they belong? How long had they been in use? Where were they purchased? Do you use them still? If not, now long is it since you ceased to use them?

A. My boat was made fast by stern line to the elevator, by bow line to the steamship Queen; myself and my son made her fast; I the bow-line, and he the stern line; two lines were used; they were manilla lines—best kind of lines; they belonged to me; they had been in use about six days; they were purchased at Schenectady; I do not use them still; I ceased to use them when they wore out, but I cannot tell how long they lasted; think until fall.

Q. What other boats were in said slip besides your own; how long had they been there, and what were they doing, if you know?

A. The steamship Queen, the elevator, the Kate Green, and a lake boat; they lay to the stern of my boat; lighter, don't know the
59 name; two lighters at bulkhead, and the Nevada, were all in the slip; I don't know how long any of them, except the Kate Green, had been there; she came in soon after I did; the Queen was receiving her cargo; I do not know what the others were doing; they seemed to be lying idle.

Q. To what was the Kate Green made fast? Who made her fast? Whose lines were used? How many and what kind of lines were used? Was she made fast at both bow and stern? If at only one end, state at which end she was made fast. Who was master of the Kate Green at that time? Did you know him then? If yea, how long had you known him? How long is it since you have seen him or have had any communica-

tion with him? Have you talked about this action with him, or with his attorney, or any one representing him? If yea, with who, and where? How long ago is it? Were you acquainted with any of the crew of the Kate Green? If yea, have you had any communication with them or either of them since the sinking of the Kate Green? If yea, when, and where, and with whom? State everything that was said, and by whom it was said, at any interview you may have had with any person in regard to the action, giving the name and present address of such person.

A. The Kate Green was made fast to my boat, the C. H. Hart, by her captain and steersman; their own lines were used; bow line and stern line—two lines; she was made fast at both bow and stern; Captain Quick was then master of the Kate Green; I did not know him at the time; I have seen him to-day; saw him also about two weeks ago, and also about six weeks ago; I have talked with him and his attorney about this action, at Central Square, Oswego County; with both of them to-day at Syracuse; I was not acquainted with any of the crew of the Kate Green; within the last six weeks I have heard from two of them by letter; I misunderstood the question; I have never
60 heard from any of the crew, aside from the captain; I have had no conversation or communication with any person, aside from Mr. Quick and his attorney, interested in this suit; I could not mention the persons I have talked with, nor their addresses; I couldn't give the conversation between me and Mr. Quick and me and Mr. Lewis; not a great deal has been said between us; they asked me what I knew about this matter; I told them, and that is the whole substance of my conversations with them about the matter.

Q. If you say you saw the Nevada in the said slip, state whether or not you were aware that she was about to sail. Did you see her when she left the slip? Where were you standing when she sailed? Did she give any notice of her departure? Did she blow her whistle or ring her bells? If you say that you were aware that she was about to sail, state how you ascertained that fact. Did you see or hear any preparation for her sailing; and, if so, what? Did you see the Nevada when she started; and did you continue to see her until she was struck by the Kate Green? If yea, state everything that occurred or was said by any one, from the time of her starting until she was so struck.

A. I was not aware that the Nevada was about to sail; I saw her when she left the slip; I was standing, when she sailed, on the rail or bulwarks of the steamship Queen; she gave no notice of her departure, except one blow of her whistle or toot just as she started; she blew her whistle once, but rang no bells whatever; I did not see, and did not hear any preparations for her sailing until the whistle blew, and then she started; I saw her when she started, and I continued to see her until she and the Kate Green came into collision; at the time of her starting, or immediately afterwards my lines parted, and she made such a commotion, the suction hauled our boats, the Hart and the Kate Green towards her, and she came up towards us; the suction drew the Kate Green under the counter of the ship, and when
61 Captain Quick saw where they were going, he hallooed to them for God's sake stop their wheel; nobody made any reply whatever; about that time the hawser from the ship parted, and the wheel of the ship at revolution struck the Kate Green; that was the collision; then I came down from the Green as quick as I could; I told my man to throw me a line; he did so; I made it fast to the elevator on

which I was standing; I told them to pull the boats up as quick as they could; they did so; then told Captain Quick to save his horses; he says, what will I do with them?" I says to him "you get your furniture out of your cabin, I'll take care of your horses;" he went to getting his furniture out, and I took his horses out and put them into my boat, and his furniture on the deck of my boat as quick as we could; about that time the wrecker came; they found they couldn't do anything to save her, and they then shoved her, the Kate Green, into the corner of the bulkhead and Pier 46; then she went under water out of sight immediately; that is all that was said or done; the ship Nevada went off to sea.

Q. State minutely everything that happened to your boat when the Nevada sailed. Was your boat injured; if yea, have you ever made any claim for compensation?

A. All that happened to my boat was that my lines parted, and my boat floated off a little ways. It was not injured, and I have never made any claim for compensation.

Q. Did you see the Kate Green strike the Nevada? If yea, state all that occurred. Where were you standing whan the collision took place. What happened to the Kate Green after she struck the Nevada. If you say that she sank, state how soon and in what part of the slip she sank.

A. I did not see the Kate Green strike the Nevada. I saw the Nevada strike the Kate Green. When the collision took place I was standing on the bulwarks of the Queen. After the Nevada struck the Kate Green, the Kate Green sank. She lasted above water
62 after she was struck from 20 to 25 minutes, I should say. She sank in the corner of the bulkhead and Pier 46.

Q. Give the length and breadth of the Kate Green. Give the breadth of the slip between Piers 46 and 47, North River, New York Harbor. How do you know these measurements?

A. Should think the Kate Green was 96 feet long, and 17 feet and four inches wide; an ordinary full-sized boat. I cannot give the breadth of the slip between Piers 46 and 47, New York Harbor, North River. I do not know what it is.

SAMUEL BEEBE.

JOHN M. JOHNSON, a witness for libellant, examined, de bene esse, before Henry P. Butler, U. S. circuit court commissioner at New York City, on June 13, 1877, having been duly sworn, testified as follows:

I reside in the town of Scrupple, Oswego County, State of New York. In the year 1871 I was engaged in boating, and had been so engaged for about four years. I am not now, and have not been for a *a* year.

In 1871 I was connected with the canal-boat Kate Green, owned by the libellant, Jasper Quick. I was a steersman. There was another steersman besides myself. On the 27th of September, 1871, I was in New York with the Kate Green. We went to Pier 47, North River, from where we had been laying, at Coenties Slip, on that day. We reached Pier 47 at about 3 o'clock p. m. We were towed there by a tug. We went into Pier 47 to unload on to the steamship Queen. The Kate Green was laden with corn.

When we arrived there there were vessels in the slip between Piers 46 and 47.

When we got there the Queen lay on the south side of Pier
63 47, and there were two elevators—one at her bow-hatch and one at her stern-hatch. The Queen lay with her bow to the stream.

She lay pretty well out towards the stream. Then there was the canal-boat Hart. She lay alongside of the elevator that was at the stern-hatch. Her bow line was moored to the Queen and her stern line to the elevator. The Nevada lay on the north side of Pier 46. I should judge that her stern was about 40 or 50 feet from the bulkhead, and I should judge that her stern was about 60 feet back of the Hart.

On coming to the slip, the tug shoving us in, we went to the side of the Hart, a man having called to us from the elevator to come there and wait our turn to unload. We ran up aside of the Hart, took out our lines, and just at that instant we discovered that the Nevada was leaving the slip.

(The last sentences objected to by claimant's counsel, on the ground that he cannot state what others discovered; and further, that what he discovered was a question of law, and not of fact.)

I saw the Nevada going out of the slip after we had our lines out. We had just got them out. No one told us that the Nevada was going to sea.

Q. Did any one call to you from the Nevada that she was about to sail?

(Objected to by claimant's counsel.)

A. No, sir.

I heard no call from the Nevada, or from anywhere else, that the Nevada was about to start. I heard no bells ringing on the Nevada.

Q. Would you have heard them if they had been ringing?

(Objected to by claimant's counsel.)

A. Yes, sir.

I did not hear any whistle blowing on the Nevada when we
64 entered the slip, nor while we were making fast. I heard no whistle at all on the Nevada. After we got off our lines the Nevada was swinging toward the centre of the slip. Her stern was swinging. The water was in great commotion, tossing the boats.

The stern of the Nevada kept swinging out as she left the slip, and at that time the boat Hart's bow-line broke, and the suction from the Nevada's screw drawing us towards the stern of the Nevada, which was swinging towards us, and the two collided. As Captain Quick saw we were going under the stern he hallooed to the man aft, "For God's sake, stop the wheel!" The stern of the Nevada had got to about where we were when we collided. I should judge we were about thirty feet from the Nevada when Captain Quick hallooed. The screw of the Nevada struck the Kate Green just back of the bow, and struck her I don't know how many times from the bow to the stern. I could feel the blows as they were given from the bow to the stern. I could not say that the Nevada's bow swung out.

I was accustomed, when boating, to be at slips and piers at the time of the departure of a steamer. I am familiar with the commotion created by steamers on their departure.

Q. How does the commotion so created compare with the commotion created this day by the departure of the Nevada?

(Objected to by claimant's counsel.)

A. It was greater on this day. The water was rily, black, and all in commotion. At the time of the collision I was standing about the bow of the Kate Green; prior to and up to the collision. I noticed a hawser from the port side of the Nevada, at the stern to Pier 46. I could not say how far back the hawser led, but it led at an angle from the stern. Just before we collided this hawser broke. I saw it break. After the collision the Nevada passed on out into the river.

65 About twenty-five or thirty minutes after, the Kate Green sank.

Q. Will you state what is the course pursued by canal-boatmen as to mooring when they are ordered to a slip for the purpose of unloading.

(Objected to as immaterial.)

A. They run in and moor at the first place that is convenient for the present, until they can get better place, or look about to get a better place.

Q. How do canal-boats usually moor?

(Objected to as immaterial.)

A. By bow line and stern line.

The bow line is usually the larger; the usual bow line is about six to seven inches in circumference; that is usually found sufficient for the strain on the bow line. The reason that the bow line is larger is that we use it for locking when we are locking down through the canal, and a greater strain comes on the bow line in snubbing the boat from going into the gates as we go from one level to another. It is usual to have the stern line about five inches in circumference. These are the two lines that we moor with in slips.

They are usually sufficient to resist the commotion of a steamer going out.

I expect to leave New York City this evening and return to my home.

Cross-examination:

The nearest railroad station to Scrupple is Lamson's Station, or rather to that portion of Scrupple in which I live.

I noticed the Nevada when I went into the slip. I could not say how near to the front of the pier her bow was. She lay further
66 back than the Queen. I should think that the stern of the Nevada was about 40 feet back of where the Kate Green was moored. When the Kate Green was struck she was not any further in the slip than she was before.

When they collided I think the stern of the Nevada had swung out about thirty feet from the pier. The whole ship did not swing over; the stern swung over.

I first saw the hawser of the Nevada just before the collision. I saw it before the hawser broke; it was fastened to a post on the pier; it was so fastened by a loop thrown over the post; I saw it when it broke. I should judge that the hawser broke at about half way from the ship to the post. I don't remember hearing the noise of the break, but I saw it break. The part fastened to the post stayed there; but I do not remember whether the broken end snapped back on the pier or fell into the water. I could not tell the size of the hawser; it was larger than the canal-boat lines, and about ten inches in circumference.

There were men at work on the pier; I don't know how many; I did not notice any one else.

I do not know how long the broken hawser laid on the pier. I saw it after the vessel left, then it disappeared. I can't say whether any of the men on the pier paid any attention to the fact that the hawser was broken.

I had no conversation with any of the men connected with the steamship line after that time.

People collected about the pier after the accident, and before we sank—quite a large crowd.

I did not see that the steamer stopped at all; she went right out into the river; it was at the flood tide.

The hawser was fastened to the stern part of the Nevada; I could not say whether the Nevada hit the end of the pier as she went out or not; I did not notice anything to indicate that she did.

Q. Would you not expect that the Nevada, being with her
67 stern thirty feet from the pier and her bow near the pier, would hit the pier as she went out?

(Objected to by libellant's counsel.)

A. I don't know.

Q. Would not the natural effect of the hawser being fastened to the stern be to prevent the stern from swinging out into the slip?

(Objected to by libellant's counsel.)

A. I think it would if it were fast, but they were rendering it off; I mean that they were letting it off from the Nevada, when it became taut and broke. I could not see them render it off, but the stern kept moving off from the pier, and the line could not have stretched; if the line was not taut up to the time of the collision, there would have been no occasion for rendering it off.

The Queen lay next to Pier 47, and then two elevators, one at the bow hatch and one at the stern of the Queen. The canal-boat that was unloading was next to the elevator that lay at the bow of the Queen. At the stern elevator there were two canal-boats, the Hart and ours. The Hart lay with her bow to the bulkhead and with her bow extending a little beyond the elevator, and we moored aside of the Hart, with our bow to the bulkhead.

The line that broke was the bow line of the Hart that was run over and fastened on the Queen. I should judge that the line, from where it was fastened on the Hart to where it was fastened on the Queen, was about fifteen feet; it led off at an angle; where the line was fastened on the Queen was nearer to the bulkhead than where it was fastened on the Hart. I saw the captain of the Hart at that time; he was about the boat; he helped us to get off our things.

I did not see anything done to make the Hart more secure
68 when the Kate Greene was moored to the Hart. I had no conversation with any one on the Hart with reference to our mooring to her, nor did any one that I know of. I did not hear any one say that the Nevada was about to sail. I don't remember that I looked on the pier 46 as we came around in. I noticed the Nevada, but I did not pay particular attention. I did not notice the Nevada with the view of knowing whether she was going to sea or not; I did not pay particular attention. I was a steersman on the Kate Green, and to help take care of her—do anything that was done; I was a hand on the boat. Mr. Quick was the captain of the boat.

Redirect:

The elevator to which the Hart was moored was a little wider than the Kate Green. If the Kate Green was 17 feet wide the line from the Hart to the Queen would of course be longer than 15 feet.

I saw a man on the stern of the Nevada when Captain Quick called.

Cross-examination:

I have stated all the vessels that were in the slip, except the floats that were round near the bulkhead.

JOHN M. JOHNSON.

CHESTER DOTY, a witness for libellant, examined de bene esse, before Russell Walden, a notary public in and for Kings County (certificate filed in New York County), at New York City, on June 12, 1877, having been duly sworn, testified as follows:

He says he lives in Erie County; his occupation that of boatman; has been a boatman 30 years; was a boatman in 1871, and now in New York on one of my trips, and leaves to-night for home; remembers a collision, in fall of 1871, between a canal-boat and steamship Nevada; was just coming into the slip; was coming into Pier 47; had a
69 cargo of corn on board; saw the Nevada leave Pier 46; saw her coming and stopped till she came out; we were coming up the river; the Queen lay on the north side of the slip and the Nevada on the south side; the Nevada passed out in front of us; the distance was about fifty feet or a hundred feet; we were going north near the pier, intending to go to Pier 47 to unload; I noticed a hawser upon the Nevada, a stern hawser; my attention was called to the fact that it had parted; my attention was called to its hawser by the boys saying that they guessed they had parted their hawser; went right on when the Nevada passed; found the Kate Green sinking; this was a canal-boat; saw the captain of the canal-boat Kate Green there; the boat sank; saw a hawser upon Pier 46, not a great ways—say 60 feet—from bulkhead.

Cross-examination:

Lives in Aurora, Erie County; was coming from the East River; had been lying at about Pier 7, East River; unloaded into the Queen after the accident; next day after the accident; there was a boat unloaded before us. Do not recollect whether there was but one; saw the canal-boat C. H. Hart there; takes sometimes three hours, sometimes five hours, to unload a canal-boat. I was being towed around; was the only boat at that time in tow; my boat was the W. Arnold; my family and myself were aboard; have six boys; they were all aboard that day; Miles, Nelson, were the names of the two eldest; these boys do not now live with me; two of the boys are now old enough to testify; the oldest was about fifteen at that time; four of the boys are now with me. There was another person with me on the boat at that time; do not know his name. Do not know the name of the tug. Knew the steamer was coming out, because the tug slacked up and we saw the steamer. Saw the broken hawser hanging from the stern of the Nevada; saw it myself. The hawser hung over the side not a great ways from
70 the stern; the part of the hawser was 40 or 50 or 60 feet that I saw. This hawser was about 9 or 10 inches in circumference; the hawser come out through a "shock;" it come out of the tap, I think. I do not know how far from the stern, but I think about 4 or 5 feet from the stern. The Nevada went out into the river; we saw the Nevada for some time; it was ten minutes or so before it became quiet, and we got into the slip. Saw the hawser as long as I was looking at the ship and until she got into the stream. Did not see the ship people taking it in. I wish to correct my statement as to the part of the hawser which I saw hanging over the stern, by saying that it was about 40 feet; when asked above, I understood the question to refer to the whole length of the hawser. The hawser was hung over and floated in the water 15 or 20 feet behind the steamer, it might have been more; it was there as long as I noticed the steamer. When I got into the slip I first heard that an accident had occurred; there were in the slip the Queen, the Kate Green. We went astern of the Kate Green; she was lying near the middle of the slip; I went on the Kate Green; got out

a sewing machine, a pair horses; just as soon as I got a line out, the boys were talking about a hawser, and I looked up and saw it on Pier 46. The rope hanging down on Pier 46 was fastened to a post, it might have been 15 or 20 feet long. Did not go upon the slip; had no conversation on the subject with any one connected with the Nevada. The time of day was about 3 o'clock; laid there until evening; stayed on my boat overnight; did not see anybody touch the hawser on the pier; it was not there next day, I think; I do not know. I saw Capt. Beebe there at the time; The Kate Green was fastened to another vessel, and the ropes were thrown before she sank. Talked with Capt. Beebe with regard to this hawser; did not have any conversation with Capt. Beebe as to the reason why his line broke.

Q. Do you know what a blue-peter is?

A. No, sir.

Q. Do you know the signals made on steam vessels when about to put to sea?

71 A. Yes, sir; they order us to make fast and to get out of the slip if there is not room.

Q. Did you ever know of their ringing bells before they go?

A. Yes, sir.

Q. You know of their blowing whistles?

A. Yes, sir.

Q. Who were the consignees of your cargo on that trip?

A. A. R. Gray, 110 Broad street.

Q. Did he direct you to unload into the Queen?

A. A notice came from that office to that effect.

Did not know any other men on the ship or the Queen, or any of the other vessels. Do not know Quick of the Kate Green very well; have seen him several times since; had some little talk with him about the case. Heard yesterday that I was to be examined here. Saw Quick an hour or so ago, for the last time; he did not come here with me; met him on Broadway; he saw me about coming here. The Nevada was under way when I first saw her.

Redirect:

Q. How do you usually moor a canal-boat in a slip, such a slip as the one between piers 46 and 47?

(Objected to as immaterial.)

A. We get out our stern and bow lines.

Q. Are they found sufficient for that purpose?

(Objected to as immaterial.)

A. Yes, sir; the hawser upon the vessel was on her port side.

CHESTER DOTY.

SHERMAN S. JEWETT, a witness for libellant, examined under

72 a commission before George J. Sicard, esq., commissioner at Buffalo, N. Y. on 26th September, 1876, being duly sworn, testified as follows:

Q. What is your name, age, residence, business, or profession?

A. My name is Sherman S. Jewett; my age is fifty-eight years and upwards; my residence is No. 251 Delaware avenue, in the city of Buffalo, New York; my business is the iron business.

Q. Were you or were you not during the year 1874 assignee in bankruptcy of the Western Insurance Company of Buffalo?

A. I was, during the year 1874, the assignee in bankruptcy of the Western Insurance Company of Buffalo.

Q. If you state that you were, state whether or not on the 22d day of August, 1874, or thereabouts, you sold certain assets of said bankrupt at public auction, in the city of Buffalo.

A. I did; on the 22d day of August, 1874, or thereabouts, sell certain assets of said bankrupt at public auction, in the city of Buffalo.

Q. If you answer the last interrogatory affirmatively, answer further, did you or did you not on that day sell to the highest bidder, at public auction, as one of the assets of said bankrupt, a claim for damages against the steamship Nevada and its owners existing in favor of said insurance company prior to its bankruptcy, and arising out of a collision at New York City, between the said steamship Nevada and a canal-boat, Kate Green?

A. I did on that day sell to the highest bidder, at public auction, as one of the assets of said bankrupt, a claim for damages against the steamship Nevada and its owners, existing in favor of said insurance company prior to its bankruptcy, and arising out of a collision at New York City between the steamship Nevada and a canal-boat, Kate Green.

Q. If you answer the last interrogatory affirmatively, state to
73 whom said claim was by you sold, and whether or not you received a consideration therefor; and, if so, what.

A. Said claim was by me sold to Frederick A. McKnight, of Buffalo, New York; I did receive a consideration therefor; the consideration was the sum of twenty-five dollars.

Q. State any other matter or thing in your knowledge that is material or necessary, or that may be advantageous to the libellant in this cause. State the same as fully as if you were thereunto specially interrogated.

A. I cannot state any other matter or thing about it; nothing occurs to me now about it.

Cross-examination:

Q. Were you connected in any way with the Western Insurance Company of Buffalo, before this bankruptcy? If yea, in what way and during what period?

A. I was not connected in any way with the Western Insurance Company of Buffalo before its bankruptcy, except that, some years before the failure, I held for the period of one year or two a small amount of the stock of the company; I think the amount of the stock I so held was about twenty-five hundred dollars, and I sold it out some years before the failure of the company, and have had nothing to do with the company, or any of its stock from that time down to the failure; that is the only connection I ever had with the company before its failure, in any way or shape.

Q. Who were and what is the present post-office address of the officers of said company from and during the year 1871 until its bankruptcy?

A. From and during the year 1871 until its bankruptcy the officers of said company were Gibson T. Williams, president; James D. Sawyer, vice-president; Edward B. Smith, secretary, and Seneca A. Clark, Assistant secretary; the present post-office address of each and every one of these gentlemen is Buffalo, New York.

74 Q. Prior to your appointment as assignee in bankruptcy of said company, did you know anything about the alleged claim of said company for damages against the Nevada, referred to in the fourth direct interrogatory? If yea, what, and from whom did you obtain such information?

A. I knew nothing whatever about the alleged claim of said company for damages against the Nevada, referred to in the fourth direct interrogatory, prior to my appointment as assignee in bankruptcy.

Q. What papers, entries in books, or writings of any kind have you ever seen or heard of having any connection with said claim? If you have ever seen any, where are they now, or where do you believe them to be, and what are your grounds for such belief? If you have ever heard of any, what have you heard, and from whom?

A. The only papers, entries in books, or writings of any kind, that I have ever seen or heard of having any connection with this claim were the papers going to make up the loss-file of the said company, in the case of the loss of the canal-boat Kate Green, and the formal entries in the books of said company relative to said loss; these entries in the books were merely abstracts of the papers composing the loss-file; these papers composing the loss-file were delivered by me, after the sale, to Mr. Frederick A. McKnight; I know nothing about the papers now, or since I delivered them to Mr. McKnight; I believe them still to be in the hands of Mr. McKnight or his attorneys, and my grounds for such belief are, that I am informed that he is still the owner of the claim, or interested in it; the books of the company, in which are the entries referred to, are still in my possession probably. I have never heard of any other papers, entries, or writings than what I have spoken of.

Q. What steps, if any, if you know, did said company ever take in respect to collecting said claim or in any way concerning it? And what steps, if any, did you, as such assignee, ever take?

75 A. I do not know what steps the company ever took in respect to collecting said claims; I have no knowledge concerning that; as assignee I tried to collect the claim of Williams & Guion; I understood that they were the owners or agents of the vessel; I corresponded with them, and sent my agent to see them and to endeavor to collect it.

Q. Are all the books and papers of said company still in existence; if nay, what has become of them? If yea, where are they now?

A. The books of said company that came into my hands as assignee are still in existence and are in Jewett & Root's warehouse in Buffalo, N. Y., as I believe. Some of the papers of the company are still in existence and my in possession; some are in the office of the clerk of the district court for the northern district of New York; many *for* the papers were sold and many were transferred to other parties, in the settl ment and adjustment of claims and controversies.

Q. By what court and when was said company adjudicated a bankrupt?

A. Said company was adjudicated a bankrupt by the district court of the United States for the northern district of New York, in November, 1871. I cannot at this time give the exact date.

Q. Did you obtain an order of court to sell said claim; if so, when?

A. I did obtain an order of court to sell said claim and others. It was in 1874, I can't fix the exact date from memory, but it was before the time of the sale.

Q. What papers, if any, passed between you and the purchaser of said claim, or were executed by anybody in connection with the sale thereof?

A. There was no papers executed or passed between me and the purchaser of said claim, except a written assignment of said claim from me as assignee to McKnight. The assignment was a printed blank filled

up. This was the only paper, except the loss-file, I have before spoken of.

76 Q. State fully and particularly what consideration, if any, you received on such sale?

A. The consideration I received on such sale was twenty-five dollars in cash.

Q. Do you know F. A. McKnight, of Buffalo, N. Y.? If yea, for how long have you known him; what is his age; what was his business in and since 1871; where is his residence, giving street and number, if any, or any otherwise exact description; was he ever connected in business or in any way with said company, with you or with Sergeant J. Quick, the libellant herein; and if yea, in what capacity and during what period?

A. I know F. A. McKnight, of Buffalo, New York. I have known him for ten years and upwards; I do not know his age; in and since 1871 he was a clerk; he lives on Pearl street, Buffalo, N. Y., according to the best of my belief, but I cannot give the number of the house or a description of it; he was never connected in business or in any with said company that I am aware of; he was never connected with me in business or in any way; I know nothing about Sergeant J. Quick, or whether McKnight was ever connected with him in any way.

Q. Have you in your possession or under your control any papers or writings inquired about in any of the preceding cross-interrogatories; if yea, what are they? Please deliver accurate copies to the commissioner, to be annexed to your deposition, as a part thereof, and returned under the commission.

A. I do not know neither do I believe that there is a single paper or writing in my possession relating to this matter. I have already testified in answer to the cross-interrogatories all that I know of the existence of these papers.

Q. Do you know anything else of advantage to the claimant in this cause? If yea, state it fully, as though particularly interrogated in respect thereto.

A. I do not recollect anything further.

77 Redirect examination:

Q. If, in answer to the ninth cross-interrogatory, you answer that a paper did pass between you and the purchaser of said claim, or was executed by you in connection with the sale of said claim, please state whether the paper shown you, marked Schedule A, is the one you refer to. Is the signature to said paper your signature? Did you execute the paper? Is the claim referred to in said paper the one referred to in your testimony above taken?

A. The paper shown me, marked Schedule A, is the assignment or paper referred to by me in my answer to the ninth cross-interrogatory; the signature to said paper is my signature; I did execute the said paper; the paper and the claim referred to in said paper are the same paper and the same claim referred to in my testimony above taken.

S. S. JEWETT.

CHARLES A. GATES, a witness produced on the part of the libellant, having been duly sworn, testified as follows:

Examined by Mr. BENEDICT.

Q. Where do you live?

A. 48 Degraw st., Brooklyn.

Q. How old are you?

A. 38.
Q. What is your business?
A. Steamboat pilot.
Q. How long have you been a steamboat pilot?
A. 9 years.
Q. What tug were you attached to in 1871?
A. The Jacob Sinex.
Q. Were you in charge of the Jacob Sinex on the day of this sinking of the canal-boat Kate Green?
A. Yes, sir.
Q. Where did you take her from?
78 A. Pier 5, East River.
Q. Where did you bring her to?
A. 46 and 47, North River.
Q. Were you in the pilot-house?
A. Yes, sir.
Q. And navigated the boat?
A. Yes, sir.
Q. Do you recollect which side of the tug the canal-boat was towed?
A. I do.
Q. Which side was it?
A. The port side.
Q. When you got up to the slip between pier 46 and 47, did you know where you were to take the canal-boat?
A. As far as a written order would direct me.
Q. How far did that direct you?
A. To deliver the boat Kate Green to the steamship Queen, 47 North River.
Q. I wish you would tell what occurred, as well as you recollect; the condition of that slip, and the position of the vessels in it.
A. To the best of my recollection the south side of Pier 47 was occupied by the steamship Queen; lying on the port bow of the Queen was an elevator, with one or more canal-boats outside of it; on her port quarter was also another elevator, with one or two boats, I am not positive which, outside. The bulkhead nearest to Pier 46 was occupied by two lighters; the north side of Pier 46, by the steamship Nevada.
Q. As you came into the slip were there any orders given you as to where the canal-boat was to go?
A. Yes, sir.
Q. Where did that order come from?
A. It came from the superintendent, as I supposed, of the elevators.
By Mr. HOLT: Do you know whom it came from?
A. I do not, sir.
79 Q. Some one on the elevator called to you where to go?
A. Yes, sir.
Q. Which elevator did the call come from?
A. The elevator on the port bow of the Queen.
Q. Did you know the man who gave the order?
A. No, sir, I did not.
Q. What was the order that was given?
A. "Place the boat alongside of the other elevator."
Q. What did you do?
A. I obeyed the order.
Q. State how you placed her?
A. I placed the boat, as near as possible, according to my instructions.

Q. State what you did.

A. Placed her outside of this boat or boats.

By the COURT: Outside of which boat?

A. Outside of the canal-boat that was lying on the port quarter of the Queen.

Q. Did you place her bow in or stern in?

A. Bow in.

Q. Do you remember how that canal-boat that you placed her alongside of was lying—bow in or stern in?

A. I do not, sir.

Q. Do you remember whether they were discharging in the elevator from that boat you put her alongside of?

A. I do not.

Q. When you got her alongside of the canal-boat, what did you do with your boat?

A. As soon as the boat was secured, I backed to the stern of the Kate Green.

By Mr. HOLT: Do you know that the boat was secured?

A. Yes, sir.

Q. Did you see how the Kate Green was secured?

A. Yes, sir.

Q. State what you saw.

80 A. She was secured by a line forward, known as the bow line, and by a stern line from her quarter, to the other canal-boat?

Q. Both of them went to the other canal-boat?

A. Yes, sir.

Q. Did you see those lines made fast?

A. Yes, sir.

Q. Did you see who made them fast?

A. I knew at the time, but I could not say now.

Q. Do you remember whether it was anybody connected with your tug, or was it persons connected with the canal-boat?

A. It was persons aboard of the canal-boat.

Q. Do you remember how the inside canal-boat was fastened?

A. No, sir; I do not.

Q. You say that after the canal-boat was fast you backed your boat away?

A. Yes, sir.

Q. How far away did you back?

A. Probably 50 to 100 feet.

Q. Then did you stop?

A. I stopped.

Q. Why did you stop there?

(Objected to by Mr. Holt.)

Q. Will you state what happened while you were lying there?

A. Immediately after I stopped, the steamer started.

Q. Which steamer?

A. The Nevada.

Q. What first attracted your attention to her starting?

A. The commotion in the slip.

Q. Just describe that commotion.

A. Immediately upon her starting, the water assumed a muddy appearance, as if the ship was on the bottom; the lighters at the bulkhead were drawn from their moorings by the steamer's suction; also the canal-boat lying next to the elevator on the port quarter of the steam-

ship Queen, and this boat or boats that was outside of her swung towards the steamer Nevada.

81 By the COURT: When you say she started you mean her screw started?

A. Yes, sir.

By the COURT: Then all this that you have been describing—the muddy water, and the lighters drawn from their moorings, and these two or three canal-boats swinging towards the Nevada—all that happened before the Nevada got in motion?

A. Simultaneously with her getting headway.

By the COURT: Did she begin to move forward immediately when you saw her screw working?

A. Not at first.

By the COURT: Did she work her screw any perceptible time before she began to move herself?

A. Scarcely.

By the COURT: It didn't seem to you to be "a moving at the dock"?

A. No, sir.

By the COURT: It seemed to be a moving of the screw, and letting her go ahead, if she would go, simultaneously?

A. Yes, sir.

Q. Did you notice whether the stern of the Nevada swung out from the pier?

A. I did.

Q. What was the fact about that?

A. Her stern inclined towards the middle of the slip.

By the COURT: At what time was it that you saw her stern begin to incline towards the middle of the slip?

A. Immediately after her obtaining headway.

Q. How far out from the side of the pier did her stern appear to swing?

A. I am not positive as to the exact distance; I should judge in the vicinity of her own width.

By the COURT: When she began to move forward where were you on your boat?

A. In the pilot-house.

82 By the COURT: At that time—the moment when the Nevada began to move forward—what part of the Nevada was directly opposite your eyes?

A. As near as I could place myself, amidships.

By the COURT: How far were you from the side of the Nevada? How far off was the starboard side of your boat from the starboard side of the Nevada?

A. A matter of 75 feet.

By the COURT: What was directly opposite your eyes on the other side; what part of any elevator or canal-boat, or of the Queen?

A. I was between the two elevators.

By the COURT: You were opposite a point between the two elevators?

A. Yes, sir.

By the COURT: What portion of the Queen did that bring you opposite?

A. To her fore and main rigging, as near as I can recollect.

By the COURT: Was any part of your boat outside of the line of the slip?

A. No, sir.

Q. How long is your tug?
A. About 70 feet.
Q. Did you see the collision between the canal-boat and the screw of the Nevada?
A. I saw the boats draw together.
By the COURT: This is the Nevada and the Kate Green?
A. Yes, sir.
Q. Before that did you hear any call from the Kate Green?
A. Yes, sir; I heard the captain of the boat.
Q. State what you heard.
A. As the boat was drawing toward the steamer I heard the captain of the canal-boat sing out to the officer on the steamer's quarter to stop his wheel.
Q. Did you see the officer on the quarter of the Nevada?
A. Yes, sir.
Q. How did you tell that he was an officer?
83 A. By his uniform.
By the COURT: He had a uniform, did he?
A. Yes, sir.
By the COURT: You mean clothes or cap?
A. Cap and navy coat.
Q. Whereabouts was that officer standing?
A. A little abaft the steamer's mizzen rig.
By the COURT: What was he standing on?
A. On the deck.
By the COURT: How much of his head and shoulders could you see?
A. I could see the best part of his body.
Q. How high is your tugboat above the water?
A. About 12 feet.
By the COURT: How much of this officer's body did you see?
A. Down to his waist, at least.
By the COURT: Did he have his back towards you, or his face?
A. I had a side view of him.
By the COURT: Did he have his back or face towards the canal-boat?
A. He seemed to be facing it.
Q. By the COURT: Did he seem to be looking over the side of the boat?
A. Apparently.
By the COURT: His eyes towards the canal-boat?
A. Looking in an oblique direction from the starboard quarter of the steamer.
By the COURT: He was looking, as it were, towards the head of Pier 47, the inner end?
A. In that direction.
By the COURT: He was looking, angling over into the slip, is that the idea?
A. As near as I can judge.
By the COURT: Towards the land end of the slip?
A. Yes, sir.
By the COURT: When this man hallooed to him what did this naval chap do?
A. He was giving orders.
By the COURT: Did you see him do anything as if he heard the halloo?
84 A. I didn't see him pay any attention to it.

By the COURT: You saw no indications that he heard it?
A. No, sir.
By the COURT: Did you see this man again as this thing went on and this canal-boat got hit? What became of this officer—this naval man?
A. I didn't notice him.
By the COURT: Didn't see him looking over the side?
A. No, sir.
By the COURT: Not at any time?
A. No, sir.
Q. Was there any stoppage of the wheel of the Nevada?
A. No, sir.
Q. Was there any stoppage in the motion of the Nevada?
A. There might have been, but it was hardly perceptible.
Q. What did you do after the Nevada got out of the slip?
A. I assisted the captain's boat in the bulkhead.
Q. Then did you go to get a steam-pump?
A. I did.
Q. What was it?
A. The John Fuller.
Q. Did you hear any whistle from the Nevada as she started?
A. I am not positive. I think there was a whistle blown as she was leaving the slip.
By the COURT: You mean before she put her screw in motion?
A. About the same time, sir.
Q. Did you hear any bells rung on her?
A. No, sir.
Q. Did you notice whether the motion of the water gave any motion to that canal-boat; I mean up and down?
A. No, sir; I did not examine it.

85 Cross-examined by Mr. HOLT:

Q. What is your present business?
A. Master and pilot of a tug-boat.
Q. Of this same tug-boat?
A. No, sir.
Q. Of another tug-boat like it?
A. Yes, sir.
Q. How long have you been engaged in that business?
A. I have been master about nine years.
Q. About the port of New York all that time?
A. Yes, sir.
Q. What time in the afternoon was this?
A. In the neighborhood of three o'clock, as near as I can recollect.
Q. Do you remember what kind of a day it was, as to weather?
A. I do not positively; I have an impression that it was a fair day.
Q. When did you first notice the Nevada that day?
A. I noticed her when I entered the slip.
Q. Did you notice her before you went in?
A. No, sir.
Q. Did you notice her before you laid the Kate Green by the side of the other canal-boat?
A. I did.
Q. What did you notice about her?
A. Nothing remarkable, only her position alongside of the dock.
Q. That she lay there alongside of the dock?

A. Yes, sir.
Q. Did you see anybody at the end of Pier 46?
A. I do not recollect that I did.
Q. Did you see anybody about the pier?
A. I can not say.
Q. Did you notice any teams about the pier?
A. I could not see the pier far enough to see that.
Q. Did you notice any people about the deck of the Nevada?
86 A. I did.
Q. How many?
A. I am not competent to say.
Q. Give us your best judgment; how many do you think were about the deck of the Nevada?
A. Fifty, more or less, visible.
Q. What is your best opinion; do you think the number was fifty, as near as you can remember?
A. As near as I can remember.
Q. What time did you notice fifty people about the deck of the Nevada?
A. At the time of her starting.
Q. You had not noticed it before?
A. Not particularly, no, sir.
Q. Had you in any way, particularly or otherwise?
A. I cannot say that I had.
Q. Where were these fifty people?
A. Scattered all over the deck.
Q. Did any one hail you from the end of Pier 46 as you went into the slip?
A. No, sir.
Q. I understand you that after this accident occurred you took the Kate Green up to the bulkhead; is that so?
A. I assisted her there.
Q. Where did you leave her?
A. Alongside this other boat at the bulkhead.
Q. What other boat?
A. The boat she was fast to.
Q. The Hart?
A. I do not know the boat's name.
Q. Did she lie next the bulkhead when you left her?
A. No, sir; bow on to the bulkhead when I left her.
Q. What was the notice that was given to you when you went in?
A. I was told to take the boat alongside of the next elevator.
Q. That was all that was said?
87 A. That was all.
Q. I understand you to say that you are not certain whether there was one boat or two at the forward elevator?
A. There may have been two.
Q. Do you know whether that elevator, the forward one, was unloading?
A. I believe she was.
Q. What is your judgment as to whether the stern elevator was unloading or not?
A. I am not positive.
Q. What is you impression?
A. My impression is that she was not working.

Q. I understand you that there may have been three canal-boats at the stern elevator?

A. I think not.

Q. Three after the Kate Green was laid there?

A. Yes, sir.

Q. You think there were two before she was laid there?

A. I am not positive.

Q. What is your opinion?

A. My opinion is that there were one or two; there was no more than two; there was certainly one.

Q. What was the condition of the slip back of the Queen and the Nevada up to the bulkhead; what was there in there?

A. Nothing between the Queen and the bulkhead.

Q. How long a distance was there at which nothing was lying?

A. I should judge about 60 feet, as near as I can recollect.

Q. Was there anything to prevent laying this canal-boat alongside the pier behind the Queen?

A. There was one thing—the man's instructions.

Q. Was there anything else?

A. No, sir.

Q. If it had been laid up at the pier behind the Queen, would
88 not that have been a safer position than outside another canal-boat outside an elevator?

A. I do not know as I am competent to decide that.

Q. Where was the Queen first fastened; which of her two lines was first fastened?

A. The bow line.

Q. Was there any time between that and the fastening of the stern line?

A. Not any great length of time.

Q. Was not a line taken out to the outer boat at the elevator at the bow of the Queen first?

A. No, sir; not to my knowledge.

Q. Will you swear that there was not?

A. I have no recollection of any; in fact we did not approach the elevator sufficiently to get a line to it; the first one.

Q. Do you know what they call an instrument in connection with the elevator that goes down in the canal-boat to unload?

A. It is designated as a leg, I believe.

Q. Was there a leg running into the boat from these elevators?

A. My impression is that there was from the first one, coming into the slip.

Q. What is your impression as to the stern elevator?

A. That there was not; still there might have been.

Q. Do I understand you that, whether there were two or three canal-boats lying at the stern elevator, they all floated off together?

A. Yes, sir.

Q. There was no canal-boat left lying up close to the stern elevator, if I understand you?

A. I have no recollection.

Q. I understand you to say that you do not know whether there were two or three, but whatever number there were they all floated off together; is that so?

A. To the best of my recollection, yes, sir.

89 Q. You testified that the motion of the screw and the motion of the Nevada were almost simultaneous?

A. Yes, sir.

Q. Was there anything different from the starting of any steamer?

A. I do not know that there was.

Q. She started the screw, and began to move out?

A. After a certain number of revolutions she started.

Q. It was just as in the case of starting any steamer?

A. Just the same as starting any boat ordinarily.

Q. How far had the Nevada proceeded towards the river before the stern swung over in the way that you speak of?

A. She commenced to swing as soon as she commenced to move out.

Q. How far had the bow got out beyond the pier?

A. I could not say as to that, not being able to see the corner of the pier from where I was.

Q. How far did her stern swing over altogether, before she got out into the river?

A. Probably no more than a width and a half of the vessel, at the farthest point; perhaps not over a width.

Q. Did her bow swing out at all?

A. I could not say as to that; I should say not; her bow was inclined the other way.

Q. I understand you that this person you speak of as an officer stood abaft the mizzen-rig; how far down is that on the steamer—what part of the steamer?

A. I didn't measure the distance.

Q. How far from the stern?

A. Perhaps 40 feet from the stern.

Q. Did you notice anybody about the pier after the steamer left?

A. Yes, sir.

Q. How many did you see?

90 A. A large crowd.

Q. But I understood you that you did not notice anybody on the steamer's deck when you went in until the steamer was actually under way?

A. That is what I said, I believe.

Q. Did you look toward the Nevada at all before the steamer was actually under way?

A. I can safely say I did.

Q. Was there anything to prevent your seeing on deck when you first went in there?

A. Yes, sir.

Q. What was to prevent your seeing on deck?

A. My attention to my own business.

Q. If you looked in that direction you could have seen on deck, could you not?

A. Possibly.

Q. Have you any doubt about it; if you had looked on to the deck of the Nevada, and persons had been there, you could have seen them, could you not, when you went into the slip?

A. I have an impression that I turned the corner of Pier 46 very close passing in, and I was very close to the steamer; I do not know that looking up over the side I could see many persons; I do not recollect that I did look up as we approached the slip.

Q. Could you not see from where you lay with the canal-boat?

A. After landing the boat I backed away.

Q. While you lay by the side of the canal-boat were you not sufficiently far from this steamer to see all over her deck?

A. No, sir.

Q. I understand you to say that if there was any check in the motion it was hardly perceptible; do you think that there was any check at all to the movement of the steamer as she went out?

A. Yes, sir; I remember they checked her with the line until the line parted. It might have stopped the steamer, but it was scarcely perceptible.

Q. Didn't the steamer appear to go right out in the ordinary way?

91 A. She appeared to move; she did move, certainly.

By the COURT: When you got back to this place where you stooped after backing you stayed in the pilot-house?

A. Yes, sir.

Q. By the COURT: How long a time elapsed after you got quiet there before the Nevada moved?

A. The Nevada commenced moving about the time I got stopped.

ERASTUS S. BROWN, a witness produced by the libellant, being duly sworn, testified as follows:

Examined by Mr. BENEDICT:

Q. What is your business?

A. I am not in any business now.

Q. What was your business in 1871?

A. Commission business.

Q. Where?

A. 102 Broad street.

Q. Do you remember the consignment of a cargo of corn on board the canal-boat Kate Green, from Buffalo?

A. I do, sir.

Q. Did you receive the bill of lading for that cargo?

A. I did, sir.

Q. From whom did you receive it?

A. Clark, Townsend & Co.

Q. Of Buffalo?

A. Yes, sir.

Q. What had they to do with the matter; what was their relation?

A. I do not know whether they owned it or whether it was consigned to them through from Chicago. They shipped it to me.

Q. (Showing witness paper.) Look at that bill of lading and see whether that is similar to the one you received?

A. I presume it is, sir.

92 Q. Did you also receive from them this certificate of insurance?

A. I presume I did. It is the ordinary routine of business for the certificate of insurance to accompany the draft and the bill of lading.

By Mr. HOLT: This is not the bill of lading that you received, but it was a duplicate of that?

A. Yes, sir.

By Mr. HOLT: What became of the bill of lading that you received?

A. My impression is that I gave it to the insurance company. I cannot find it among my papers now.

Q. (Showing witness paper.) Look at that and see if that is the certificate of insurance?

A. I cannot swear positively to this, any more than in the usual transaction of the business this would be accompanying the bill of lading and the draft.

Q. Do you remember that there was an insurance on that cargo?

A. There was; yes, sir; and we had the certificate.

(Objected to.)

Q. Whose endorsement is that on the back; are you acquainted with that writing?

A. Yes, sir; that is the signature of Clark, Townsend & Co.

(The certificate above referred to is offered in evidence.)

Q. In what company was this consignment insured?

A. A Buffalo company—the Western Insurance Company, I think it was.

Q. Was there a claim made on them for the loss?

A. There was; yes, sir.

93 Q. Did you attend to making the claim and settling the matter up?

A. I and my clerk, an attorney. My son, who was my clerk, collected the loss from the insurance company. I called upon the company here before leaving for Buffalo. They neglected to attend to it at that time. I went to Buffalo, and saw one of the members of the firm of Clark, Townsend & Co., and they telegraphed down to the company here to pay it to my son here on the 7th October.

Q. Was it so paid?

A. Yes, sir.

Q. (Showing paper.) Is that the receipt that was given?

A. Yes, sir; that is my son's signature; my name and his name as my attorney.

(The receipt referred to is offered in evidence.)

Q. At the time the bill of lading came there was a draft came with it on you?

A. Yes, sir.

By the COURT: Do I understand that you had a claim for this loss?

A. I had a claim because I paid the draft which was made against it; Clark, Townsend & Co. were the shippers of the corn to me from Buffalo; they made a draft on me at 20 days from the 2nd September, I think, as against this load of corn; the corn came forward and the draft matured on the 25th September; the boat arrived here on the 25th September; I sold the corn on the 26th September; I paid the draft on the 25th September at maturity; the draft was made against two loads of corn, and this was one of them; I cannot designate the exact amount on this cargo—about $4,500; it was $8,949.16 against this cargo of 8,005 bushels and another cargo of 8,000 bushels; I sold the corn September 26th; the party to whom I sold it resold it the next day.

By Mr. HOLT: Do you know?

94 A. I judge so.

By the COURT: Did you get your pay from the man you sold it to?

A. No, sir.

Q. What papers accompanied the draft?

A. The bill of lading and the certificate of insurance; I can not identify in this case particularly, but that is the common order of business that we have in all cases, and on the acceptance of the draft I take the bill of lading and the certificate of insurance; that is the usual course of business.

Q. Your recollection is that that was the course in this case?

A. Yes, sir.

By the COURT: You say you sold the corn; what do you mean by selling it?

A. I sold it to a party one day and they resold it the next day, and then gave me an order to deliver to this steamship; I gave the order direct to the transportation line.

Q. You paid on delivery?

A. Yes, sir.

By the COURT: How do you mean you sold it?

A. The sale was made and the next day he resold it, and then told me where to send this load of grain.

By the COURT: When were you to get your pay from the person to whom you sold it?

A. There is no usual time; whenever it was delivered.

Q. Were you responsible to the person to whom you sold it for getting it out of this canal-boat?

A. Yes, sir; I was.

Q. There was no delivery as long as it was in the canal-boat?

A. That is the custom of the trade; there is three days given for delivery, and we have to deliver it during that time; we sometimes give five days, but that is special.

95 By the COURT: You owned the grain against the insurance company, and it was for yourself that you collected the loss?

A. Yes, sir.

By the COURT: I understand you that on the 7th October, 1871, you received from this company this amount named in the receipt?

A. Yes, sir; that purports to be my son's receipt.

By the COURT: You know that you received the money?

A. Yes, sir.

By the COURT: And you received it on account of this thing that you have been telling about—this cargo of corn that went down, and you received it in discharge of this policy of insurance?

A. Yes, sir.

By the COURT: Did you surrender that certificate to the company when you got your money?

A. Yes, sir.

By the COURT: Did you have this second certificate (referring to a second certificate)?

A. Mr. James gave me that. It passed through my hands, and I gave it up to the company.

Q. Do you know the indorsement on the back of that paper?

A. No, sir.

Q. Do you know Mr. James' signature?

A. Yes, sir; I know his.

Q. You received that paper from him?

A. Yes, sir.

Q. I understood you to say that before collecting this loss you had made an abandonment to the insurance company?

A. Yes, sir; I had made an abandonment in this way: that when notice came to us of the collision we gave notice to the insurance company of the collision, and they took charge of it.

Cross-examined by Mr. HOLT:

Q. How did you give this notice?

A. I cannot tell you whether in writing or verbally.

96 Q. To the company or to the agent?

A. To the agent in New York.

Q. Who was the agent here?
A. Kingman, I think.
Q. Do you know where he is now?
A. No, sir; I do not.
Q. Where was his place of business at that time?
A. I think in Broadway; 150 or 160; somewhere along there; near Courtlandt street; I cannot tell the number now.
Q. Do I understand you to say that you made up the papers in relation to the loss?
A. We rendered our bill to the insurance company.
By the COURT: The proofs of loss—affidavits that the corn was at the bottom of this water?
A. I do not know about that; my son attended to that.
Q. Is your son in the city?
A. Yes, sir.
Q. Where?
A. 102 Broadway.
Q. What is his name?
A. Augustus Brown.
Q. Did you ever see any papers that he gave to the insurance company—proofs of loss?
A. No, sir.
Q. You did not take any when you went out to Buffalo?
A. No, sir; I called at the office here in the afternoon, before leaving for Buffalo, and spoke to them about it; they kept putting me off; I went to Buffalo and saw the consignor of the corn, Mr. Clark, and told him that the insurance company had not paid me, and how Mr. Kingman had been dealing. He said, "The company has plenty of money in Mr. Kingman's hands; there is no reason why you should not have had your money before." We went around to the office of the company, and he told them the case, and said their agent had not paid it.
97 The man in the office thought it very strange that Mr. Kingman had not paid it. He telegraphed to him on Saturday, the 7th October, and my son went to the office, and Mr. Kingman paid him; on the next day was the fire in Chicago, which wiped out the insurance company; it was about the last loss which the insurance company paid.
Q. What became of your contracts with other parties to sell the corn to them?
A. There was no contract about it—a mere verbal contract to sell. We accounted to them for the price it was sold at.

MORRIS T. JAMES, a witness produced by the libellant, having been duly sworn, testified as follows:

Examined by Mr. BENEDICT:

Q. Were you one of the firm of M. F. James & Co. in 1871?
A. Yes, sir.
Q. (Showing witness paper.) I show you Exhibit No. 3. Is that the indorsement of your firm?
A. Yes, sir.
Q. Do you know this indorsement of Anthony & Co.?
A. Yes, sir.

EXHIBITS OFFERED IN EVIDENCE AT THE TRIAL.

*Exhibit No. 1.—June 19, 1877.*

BUFFALO, NEW YORK AND ITHACA CANAL LINE,
No. 374.] *Buffalo, Sept. 6th*, 1871.

Shipped by S. E. Anthony & Co., as agents and forwarders, in appa-

rent good order, on board canal-boat Kate Green, of Caughdenoy, Captain J. Quick, the following-described property, to be transported to the place of destination without unnecessary delay, and delivered to
98 the consignees in like good order, as noted below, in the customary manner, free of lighterage, upon payment of freight and charges as prescribed in this bill.

Consignees to pay all harbor towing from and to the usual place of landing. Three week days, regardless of weather, including days of arrival, and notice of same before 4 o'clock p. m., to be allowed consignees to discharge this cargo, after which time the cargo or consignees are to pay demurrage at the rate of two per cent. per day upon the freight, including tolls for each and every day of such demurrage over three days, as above specified, until the cargo is fully discharged. All damage caused by the boat or carrier or deficiency in the cargo from quantity as herein specified to be paid for by the carrier and deducted from the freight, and any excess in the cargo to be paid for to the carrier by the consignee. In case grain becomes heated while in transit the carrier shall deliver his entire cargo, and pay only for any deficiency caused by heating exceeding five bushels for each one thousand bushels.

The freight charges and demurrage payable to M. F. James & Co., or order, at place of destination, who is the only party authorized to collect the same, and whose receipt shall be in full of all demands on this cargo or bill of lading.

Tolls on this cargo having been advanced by shippers, if refunded must be to them or their order.

Received of S. E. Anthony & Co., shippers, dollars, to be used in the transportation of above cargo and in paying the expense of running boat from Buffalo to , and for no other purpose.

Account Clark, Townsend & Co. (care of E. S. Brown, 102 Broad street, New York):

99 Coll'n (care W. F. James & Co., 105 Broad street, New York):

| | |
|---|---|
| 8,005.50 bushels No. 2 corn | $4,483 30 |
| Freight, per bushel, 11 c | 880 66 |

Account S. E. Anthony & Co. (care W. F. James & Co., 105 Broad street, New York):

| | |
|---|---|
| 94.06 bushels No. 2 corn | 5,270 00 |
| Freight, per bushel, 11 c | 10 34 |
| Charges, per duplicate | 891 00 |
| S. E. Anthony & Co. advanced account freight which W. F. James & Co. hold for draft of S. E. A. & Co., chartered boat and cargo to Troy | 791 00 |
| On safe delivery pay balance to captain | 100 00 |

his
JASPER + QUICK.
mark.

Witness: J. A. L.

S. E. ANTHONY & CO.,
J. A. L.

E. D. BARTON, *First Clerk.*

Indorsement.

| | | |
|---|---|---|
| Insurance | | $27 30 |
| Cash, $5.00, $5.00 | | 10 00 |
| Insurance last load | | 2 00 |
| Draft, Syracuse | | 75 00 |
| Check to pay note | | 108 78 |
| Paid order | | 2 00 |
| Tug Trowbridge | | 4 00 |
| Tug D. Boone | | 2 00 |
| Lumber | | 16 96 |
| | Tallying | 2 00 |
| 100 | Trimming | 10 12 |
| | Toll | 241 64 |
| Commission | | 36 90 |
| Cash order | | 252 30 |
| | | $791 00 |
| Advances | | $252 30 |
| One cent per bushel | | 81 00 |
| | | $333 30 |

*Exhibit No. 2.—June 21st, 1877.*

No. 20039.] Canal cargo certificate. [$4,900

THE WESTERN INSURANCE COMPANY,
*Office 44 and 46 Main st., Buffalo, N. Y.*

Cash assets ..... $650,000 00

This certifies that S. E. Anthony & Co. insured under the condition of canal cargo policy No. , issued by the Western Insurance Company, in the sum of forty-nine hundred dollars, on corn shipped on board of boat Kate Green.

$3,700 at and from Buffalo to New York.

$1,200 at and from Troy to New York.

Loss, if any, payable to Clark, Townsend & Co., or order, and return of this certificate.

Buffalo, September 6, 1871.

E. B. SMITH, *Sec'y.*

Endorsed by Clark, Townsend & Co.

*Exhibit No. 3.—June 21, 1877.*

No. 20332.] Canal cargo certificate. [$800

THE WESTERN INSURANCE COMPANY,
*Office 44 and 46 Main st., Buffalo, N. Y.*

Cash as'ets ..... $650,000 00

This certifies that S. E. Anthony & Co. insured under the con-
101 ditions of canal cargo policy No. , issued by the Western Insurance Company, in the sum of eight hundred dollars, on corn shipped on board of boat Kate Green.

$800 at and from Buffalo to New York.
$ at and from Troy to New York.
Loss, if any, payable to S. E. Anthony & Co., or order, and return of this certificate.
Buffalo, September 6, 1871.

S. A. CLARK,
*Ass't Sec'y.*

(Endorsed:) Pay Messrs. W. F. James & Co., or order.
S. E. ANTHONY & CO.
M. F. JAMES & CO.

*Exhibit No. 4.—June 21, 1877.—Adjudication of bankruptcy.—Creditors' petition.*

In the district court of the United States for the northern district of New York.

IN THE MATTER OF THE WESTERN INSURANCE COMPANY, BANKRUPTS. } No. 3156. In bankruptcy.

At the city of Buffalo, in said district, on the first day of November, A. D. 1871.

NORTHERN DISTRICT OF NEW YORK, *ss:*

This cause came on to be heard at the city of Buffalo, in said court, and due proof having been made of the service of a copy of the order to show cause and copy petition herein to this day, and the
102 said The Western Insurance Company now appearing in this court, by Gibson T. Williams, its president, and Dennis Bowen, esq., its attorney and counsel, and having filed its answer in writing to said petition, admitting that the several allegations contained in said petition are true as therein made, and consenting that the prayer of said petition be granted by this court:

And thereupon, and upon consideration of the proofs in said cause, and the said insurance company consenting, it is found that the facts set forth in said petition were true; and it is therefore adjudged, on motion of Messrs. Ganson & Smith, of counsel for petitioner, that the Western Insurance Company became bankrupt within the true intent and meaning of the act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2nd, 1867, before the filing of the said petition; and it is therefore declared and adjudged a bankrupt accordingly.

And it is further ordered that the said bankrupt shall, within five days after notice of this order, make and deliver, or transmit by mail, post paid, to the marshal, as messenger, a schedule of its creditors, and an inventory of its estate, in the form and verified in the manner required of the petitioning debtor by the said act.

That the said petition be referred to Jos. L. Fairchild, esq., one of the registers in bankruptcy of this court, to take such other proceedings therein as are required by said act; and that the said petitioners shall, on or before the 5th day of December, 1871, at 10 o'clock a. m., file with said register a duplicate copy of said petition, and that said bankrupt attend before said register on the said day, at 10 o'clock a. m., and thenceforth, as said register may direct, to submit to such orders

as may be made by said register, or by this court, relating to its said bankruptcy. And, further, that until otherwise ordered by the court the said register shall act upon the matters arising in this case,
103 at his office, at Buffalo, in the county of Erie, at the time last aforesaid, and afterwards at such times as he shall fix for that purpose.

Witness the Hon. Nathan K. Hall, judge of the said court, and the seal thereof, at Buffalo, in said district, on the first day of November, A. D. 1871.

[L. S.] M. P. FILLMORE,
*Clerk of the District Court for said District.*

HALL.

No. 3156.

UNITED STATES OF AMERICA,
*District Court, Clerk's Office,*
*Northern District of New York, ss:*

I, Winfield Robbins, clerk of said court, do hereby certify that I have compared the annexed copy of an adjudication of bankruptcy with the original adjudication entered and on file in this office, and that the same is a correct transcript therefrom and of the whole of said original.

In testimony whereof I have caused the seal of the said court to be affixed, at the city of Buffalo, in said district, this 13th day of March, A. D. 1876.

[SEAL.] WINFIELD ROBBINS, *Clerk*

104 *Exhibit No. 5.—June 21, 1877.*

In the district court of the United States for the northern district of New York.

IN THE MATTER OF THE WESTERN INSURANCE COMPANY, BANKRUPT. } In bankruptcy. No. 3156.

NORTHERN DISTRICT OF NEW YORK, *ss:*

Know all men by these presents that Sherman S. Jewett, of the city of Buffalo, in the county of Erie and State of New York, in said district, has been duly appointed assignee in said matter. Now, therefore, I, Joseph L. Fairchild, register in bankruptcy of said district, by virtue of the authority vested in me by the 14th section of an act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, do hereby convey and assign to the said Sherman S. Jewett, assignee as aforesaid, all the estate, real and personal, of the said The Western Insurance Company, bankrupt aforesaid, including all the property, of whatever kind, of which he is possessed or in which he was interested or entitled to have on the thirty-first day of October, A. D. 1871, with all his deeds, books, and papers relating thereto, excepting such property as is exempted from the operation of this assignment by the provisions of said 14th section of said act; to have and to hold all the foregoing premises to the said Sherman S. Jewett and his heirs forever; in trust, nev-
105 ertheless, for the use and purposes, with the powers and subject to the conditions and limitations set forth in said act.

In witness whereof I, the said register, have hereunto set my hand and caused the seal of the said court to be affixed this 18th day of December, 1871.

[L. S. OF THE COURT.] JOSEPH L. FAIRCHILD,
*Register in Bankruptcy.*

UNITED STATES OF AMERICA,
*District Court, Clerk's Office,*
*Northern District of New York:*

I, Winfield Robbins, clerk of said court, do hereby certify that I have compared the annexed copy of an assignment with the original assignment entered and on file in this office, and that the same is a correct transcript therefrom and of the whole of said original.

In testimony whereof I have caused the seal of said court to be affixed, at the city of Buffalo, in the said district, this 12th day of August, 1876.

[L. S.] WINFIELD ROBBINS, *Clerk*,
By I. G. HIRSBECK, *Deputy Clerk*.

106 *Exhibit No. 6.—June 21, 1877.*

At a court of bankruptcy held in and for the northern district of New York, at the city of Syracuse, on the 21st day of July, A. D. 1874.

Present, Hon. William J. Wallace, district judge.

IN THE MATTER OF
THE WESTERN INSURANCE COMPANY, A BANKRUPT. } No. 3156.

On reading and filing the petition of Sherman S. Jewett, the assignee of the above-named bankrupt, showing that among the property which has come to his hands as such assignee, as a part of the property of said bankrupt, are a large number of promissory notes made by sundry persons to said bankrupt; that to many of said notes offsetts and defenses are claimed to exist, and the solvency and responsibility of the makers of some of said notes is doubtful, and that said notes are mostly made by persons residing out of the State of New York and reside in the different Western States; that among the property of said bankrupt which has come to the hands of said assignee are a large number of debts claimed to be due said bankrupt upon open accounts against many different persons, most of whom reside out of the State of New York and in various places in the Western States; that defenses and offsets against said last-named debts are claimed to exist in many case;

107 that the solvency of the alleged debtors is in many cases doubtful, and that in many cases it is difficult to ascertain what, if any, sum is justly due upon said open accounts.

That among the assets of said bankrupt which have come to the hands of the said assignee are also a large number of unliquidated claims against said sundry persons and corporations; that most of said persons reside out of the State of New York, and said corporations are mostly foreign corporations; that many of said claims are of doubtful validity, and their value unascertained; and that said petitioner, as such assignee, has in his possession certain other assets of small value. And said petitioner praying that an order be made in this proceeding authorizing and empowering said petitioner, as such assignee, to sell all such

claims, notes, accounts, and assets now in his possession or under his control:

Now, on motion of Robert P. Wilson, esq., attorney for said assignee, it is hereby ordered that the prayer of said petition be granted, and that said petitioner, as such assignee, be, and he is hereby, authorized and empowered to sell all claims, notes, accounts, and assets in his possession or under his control as such assignee, such sale to be at public auction in the city of Buffalo, and that said assignee publish a notice of such sale in the newspaper called the Buffalo Commercial Advertiser and the Buffalo Courier twice a week for four weeks prior to such sale.

Witness Hon. Wm. J. Wallace, judge of said court, and the seal thereof, at Syracuse, in said district, this 21st day of July, A. D. 1874

[L. S.] M. P. FILLMORE, *Clerk.*

No. 3156.

UNITED STATES OF AMERICA,
*District Court, Clerk's Office,*
*Northern District of New York, ss:*

I, Winfield Robbins, clerk of said court, do hereby certify
108 that I have compared the annexed copy of an order with the original order, entered and on file in this office, and that the same is a correct transcript therefrom and of the whole of said original.

In testimony whereof I have caused the seal of the said court to be affixed, at the city of Buffalo, in said district, this 8th day of April, A. D. 1876.

[SEAL.] WINFIELD ROBBINS, *Clerk.*

EXHIBIT.—(Trial.)

Canal-boat Kate Green:

Tow your boat to Pier 47, N. River, and deliver cargo to steamer Queen.

M. F. JAMES & CO.

Libellant rests.

WILLIAM FORSYTH, a witness for claimant, examined de bene esse, before James H. Gilbert, U. S. circuit court commissioner, at New York City, on April 23, 1877, having been duly sworn, testified as follows:

I reside in Liverpool, England; I am a master mariner by occupation; I will leave this country to-morrow for England; I am the master of the Wisconsin, one of the vessels of the Williams and Guion line. In September, 1871, I commanded the Nevada, a steamer belonging to the same company; I first took command of her in July, 1871, and continued in command until April, 1874; I have been a seafaring man for 35 years, and a master for 15 years.

109 I remember the sailing of the Nevada from New York on 27th September, 1871; I was on board; she left at 3 o'clock in the afternoon; I was on board for a couple of hours before she left; when the time approaches for sailing, about 15 minutes before sailing, we ring bells to notify those aboard that are not passengers that it is time for them to go ashore; there are two bells on deck which are rung, and we also blow the steam-whistle; one large bell is a little before the

centre of the ship, near the smoke-stack; it is 18 inches by 12, and hangs about five feet above the deck, in the open air; I should think that bell could be heard distinctly 400 or 500 yards off; I think it could have been heard on that day as far as Pier 49, which is two piers beyond Pier 47; the other bell is placed aft about 60 feet from the stern, hanging in the open air, about three feet above the deck; it is about 12 inches by 8; these bells were rung on that day three times before sailing; the first time about fifteen minutes before sailing, and that time continued ringing for a minute or so; the next time was about five minutes before sailing, when they continued for a minute or so; the third time was just before sailing, when they continued ringing for half a minute or a minute; the steam-whistle was also blown at that time; it was blown twice before sailing, and again on leaving, and kept blowing while the vessel was going out from the dock; that whistle could be heard two miles off; the first whistle was blown about ten minutes before starting, probably; the second immediately before starting, and kept blowing while the ship was going out; this blowing commenced just as the ship is cast off; she also hoisted a blue-peter that day as a signal that the ship was to sail that day; this is a signal understood by all nautical men; it was hoisted to the foremast-head; it could have been seen distinctly on that day by persons on board canal-boats lying between the ship and the pier next north.

110 I think there were about 16 cabin passengers on that voyage; I think altogether there were from 50 to 100 passengers, steerage included; there were a great many people not passengers about the decks that day; it was a fine day; in my judgment there were probably over three hundred people about the decks that day; there were 110 in the crew; these people were all over the upper deck; they couldn't be seen from a lighter lying immediately alongside, or most of them could not; but they could be seen from the piers and from boats lying in the slip; there are generally numbers of teams and carriages about the dock on sailing day, and the pier is in great confusion; it was so on this day; the ship lay between the canal-boats in the slip and the dock, and shut off the view of what was going on on the dock, as far as she extended; but the dock was in view at either end of the ship; all these proceedings are attended by a certain amount of noise and bustle which can be better imagined than described; there was nothing unusual about the noise on that day; there was no greater noise on that day than on any other sailing day; sometimes when we are working cargo there is as much noise as on sailing day; on sailing day there is this difference in the noise which would indicate that the ship was about to sail: the shouting of people, the blowing of steam-whistles, ringing of bells, and bustle and noise of teams on the dock.

On the occasion of the sailing, by my orders, the officers went around the ship and shouted to the lighters lying in the slip to make well fast, that we were about to go to sea; the men on the lighters no doubt would answer; I went around the ship myself, and I didn't see any lighters in immediate danger, and I gave orders to the officers to warn the lighters; what was done on that occasion is done on every sailing day; there were several lighters or canal-boats in the slip; some of them were lying alongside the steamer Queen at Pier 47, and some of them against the bulkhead.

111 Q. If they had her securely fastened where they were, could they have been hit when the vessel went out?

(Objected to.)

A. No.

Q. Did the Nevada in going out take such a course that she could have hit any of these canal-boats if they had stayed where they were lying?

(Objected to.)

A. No.

Q. Is there any difficulty in so mooring a canal-boat that it will not be drawn away by the suction caused by the screw of a steamer?

(Objected to.)

A. No.

Cross-examination:

I kept a memorandum of that voyage—a private log; I always keep a private log; I referred to it last a couple of hours ago; there is nothing in it about ringing the bells, and I did not refresh my recollection in that respect; the date and hour of sailing and number of passengers and the wind and weather are what I record in my log; I don't record the tide; I don't recollect what was the tide on that day; we always leave on a flood-tide, about two hours from high water; that is the usual custom, and I recollect that it was flood-tide on that day; I recollect seeing the water run up-stream on the 27th day of September, 1871, at 3 o'clock in the afternoon.

Q. By what other circumstance than seeing the water flow up-stream were you enable to recollect that you sailed on a flood-tide?

112 A. Because we always sail on a flood-tide.

My duties on the voyage are to take care of the ship; I am brought into association with the officers and others on board more or less.

Q. Are you socially disposed?

(Objected to.)

A. That is a question my friends can better answer. I associate with the passengers and make more or less acquaintance with them every voyage, and sometimes friends; I don't recollect whether I made any friends on that voyage or any acquaintances; I don't remember the names of any of the cabin passengers on that voyage; I don't remember any passenger whose name I have forgotten.

I don't recollect who gave the order to ring the bells on that day; sometimes one officer did it and sometimes another; it is always customary to ring the bells generally twice or three times; I couldn't say for certain that I ordered the bells rung on that day, but they were rung in my hearing; they would be rung in my hearing if I was on board or on Pier 49; one cannot very well draw the distance a bell would be heard; I don't know for certain that the bells could be heard on Pier 49; I never tried the experiment; I couldn't say for certain who ordered the second bell rung, but I would be very apt to do it myself; the same person did not ring both the large and small bell; they would be rung at the same time; I couldn't say who rung the little bell the second time on that day; it was one of the men.

One of the quartermasters rang the large one the second time; I couldn't say who rang the large one the third time; I couldn't say who rang the little bell the third time; I couldn't say who pulled the whistle-string the first time; it was a quartermaster, in all probability, under my order; it is always done by my order; I don't recollect to whom

113 I gave the order; perhaps I blew it myself; I blow it myself as often as anybody else; I can't say whether I blew it on this day or not the first time; I cannot say who blew it the second time; it was done by my order; the reason I think it was done by my

order is that these things are generally done by my orders; I may have pulled it myself; I don't recollect anything about it.

What I have described as occurring on that day prior to sailing were the usual occurrences; no different in any respect from any other departure. We were down to our usual draft. I speak this from my private log.

There is no particular difference between this voyage and the one before it. The thing that drew my attention to it was that a few days after my arrival in Liverpool I was asked by the company if I had had any collision or sunk any lighter in New York. That was the first intimation I had had of it, and that drew may attention particularly to the voyage.

Q. Have you ever had any other collision?

(Objected to.)

A. No; not that I remember. I ran into a dock once several years ago. It was Pier 47, in New York. It didn't do much damage to the dock.

Q. Was your company held liable for it?

(Objected to.)

A. I don't know.

Q. Did you expect that you were going to be held liable for it?

(Objected to.)

A. I didn't think anything about it.

Q. When was it?

(Objected to.)

114 A. Five or six years ago.

Q. Do you remember the circumstances attending your departure from Liverpool on the trip when you had this collision?

(Objected to.)

A. No.

On the 27th of September, 1871, at 3 p. m., the Nevada was lying on the north side of Pier 46, head to the westward. The steamer Queen, I think it was, was lying on the south side of Pier 47, with her head I think to the westward. There were several canal-boats alongside the Queen, with an elevator and several others lying against the bulkhead about the middle of the slip. The dock was pretty well full of these canal-boats. I don't know how many canal-boats there were, and I cannot give their positions more definitely. The Queen and the Nevada lay parallel to each other. The Queen is the larger ship.

There is a house over the pier, but about 12 feet of the end is not covered. The sides of the house are all divided in doors, to be opened towards the ship. On that day most of the side of the shed would be open.

I don't recollect seeing any tow-boat in the slip or around it at 3 o'clock on that day. There could not have been any tow-boat alongside the Nevada without my seeing it. I don't remember seeing any at that time. If there had been a tow-boat in my way, I would have seen it and warned it. I don't recollect that there was any tow-boat around when we sailed. On that voyage Mr. Holmes was my 1st officer, Mr. Gadd the 2d, Mr. Owens the 3d, and Mr. Moore the 4th.

I usually stand on the bridge when the ship leaves. That is a rule never departed from. I am sure I stood on the bridge that day while the ship was leaving. I recollect seeing Mr. Moore on the upper

115 deck, in the waist of the ship; that is just at the bridge. Mr. Owens would be stationed at the gangway aft, 40 or 50 feet from me. That would be his proper position, on the side next the wharf.

while the vessel was leaving, and after that on one side or the other as circumstances required. I have no special recollection of seeing him there now. I know he must have been there.

Holmes's position was in the bow of the ship at the time of sailing. He was in a position where I could see him. I don't specially recollect seeing him there on that occasion, but I know he must have been there, because his duties called him there.

Mr. Gadd was at the stern of the ship, on either side. His duties were to see that all was clear at that end of the ship, and superintend the work there. He was to stay there until he got to Sandy Hook. He is a lookout aft. If we saw a vessel astern, in danger of being struck, his duty would be to call my attention by passing the word to me or by signalling me with his whistle. He could signal me to stop the engine if there was any danger, or sing out. I would then stop the engine by signalling to the engineer. The order to stop could be given instantly from where I stood. I have conversed with some of the officers about this collision. I asked them a few days after I got to Liverpool if they knew anything about it, and they said they did not.

Redirect:

At the time of leaving the dock, if there were any lighters or anything near us, the officer at the stern would be at the extreme end of the ship.

Q. How long would it take the canal-boat nearest you, assuming that it was not moored, to drift over near enough to be struck?

A. I can't tell. I have never seen it tried. It takes the Nevada about a couple of minutes to clear the dock.

Recross:

116 I went around the ship about fifteen minutes before leaving, to warn the lighters, as stated in my direct examination. We keep moving around the deck all the time during the last half hour.

WM. FORSYTH.

WILLIAM HOLMES, a witness for claimant, examined de bene esse, before James H. Gilbert, U. S. circuit court commissioner, at New York City, on February 2, 1877, having been duly sworn, testified as follows:

I reside at Egremont, Cheshire, England; I am a mariner; I know the steamship Nevada; I was connected with her in September, 1871; I was her first officer; I remember her departure from this port on the 27th day of September, 1871; I was on board at the time, and all day the day she departed. The ship left the dock at three o'clock in the afternoon.

Q. What, if anything, was done that day, before the departure of the ship, to indicate that she was about to depart?

A. The bells were rung and the whistles blown, and warning was given to the craft alongside that we were going away, and to make themselves well fast. There were two bells on the ship—one in the middle part of the ship and the other aft the poop. They were on the upper deck. The Nevada lay at Pier 46, North River, and the pier next above was Pier 47.

Q. Could persons on the adjoining pier—47—hear these bells?

A. Yes; they must have heard them.

Q. Could persons on that pier see these bells?

A. Yes.

Q. Could persons on the vessels lying between these piers see these bells?

A. Yes; they could if they had looked for them. They were open to everybody's view.

117 I had then been connected with the Nevada for from fifteen to eighteen months; I have been connected with her since until April, 1875, when I left her; I am familiar with the sound made by those bells.

Q. How far a distance, in your opinion, can they be heard?

A. They can be heard with ease 400 or 500 yards; one bell is large and the other small; the largest is about eighteen inches from the bottom to the top, and about eighteen inches wide at the bottom.

The weather on that day was fine.

These bells were rung about a quarter of an hour before we started, and again a few minutes before we started; I ordered them to be rung the first time; I ordered the quartermaster to ring them, and thereupon they were rung; I can't say that I saw them in motion; I heard them ring; it was a part of my duty to order them to be rung; the object of ringing them the first time was to give warning that we were about to depart to the passengers' friends and the ships lying along side, and all persons.

Q. Are you familiar with the customs of steamships in regard to giving notice of their intention to depart?

A. Yes, sir.

Q. What do they usually do at such times?

A. Ring their bells and blow their whistles, and the steam is usually coming from their steam-pipe, and the blue-peter is always raised to the masthead to show that the ship is going to sail that day; the blue-peter was up that day, with the American ensign alongside it in a ball; the blue-peter was flying, and both were in such positions that they could be seen by persons on board vessels lying between the piers. The whistles were blown about ten minutes before we started and again just before we started, and continued blowing until we were half way out down the pier; I can't say whether the first time the whistle

118 was blown was the same time the bells were rung; I gave the order to blow the whistle.

The steam had been rushing off for about an hour before we started, continuously.

Q. Is the noise made by that escape of steam such that it could be heard by a person on Pier 47?

A. Not all the time; sometimes when it got over-pressure it would make a noise; other times it would escape without much noise.

Q. Do you recollect whether during the ten or fifteen minutes before sailing this steam made a loud noise or not?

A. No.

About 70 or 80 steerage passengers sailed on that voyage and about 30 saloon I should think. There were a considerable number prior to the ship's sailing; there were a great many other people on board; the ship was crowded; these people were in such places on board they could plainly be seen from Pier 47, and from the craft lying between the piers, and heard too; the shipment of freight did not continue until the last moment before sailing; we were taking in baggage then.

There were people on and about Pier 46 before we sailed; the pier was crowded; there were carriages and teams there, and people on

foot; those that were further up the pier than the ship extended and abaft the stern of the ship on that pier could be seen from Pier 47, and from the craft lying between the piers; there was a great deal of noise and bustle occasioned by the preparations for the ship's leaving, and it could be plainly heard from Pier 47, and from the craft lying between the piers. After the bells first rung and the whistle first blew, the friends of the passengers set about leaving the ship; that was going on all the ten minutes before leaving, more or less; the stream of people leaving the ship could be seen from Pier 47, but I can't say about the craft.

The steamer Queen was lying at Pier 47 and there were a few people about her decks.

119 I didn't give the order for the bells to be rung the last time; they were rung about a minute or two before we started, and during this minute or two they were rung continuously; the whistle was blown then about the same time the bells were ringing; the bells stopped before the ship started, and the whistle continued to be blown until the ship got well out from the pier; the bells stopped about a minute before the ship started.

Notice was given to the people in charge of craft alongside Pier 47 that we were about to start, and to make fast; that the suction from our fan might set them adrift. The overlooker, Captain Dewar, gave the notice, I suppose, two or three times within an hour.

Q. When the Nevada started from the pier was there a hawser running from the Nevada to the dock, that was fast and broke?

A. There was a hawser that was fast, but it didn't break; as she started the rope was slacked away and when she got clear it was thrown off.

I do not expect to remain in this district after next Tuesday; I am to sail on a voyage to England on that day.

Cross-examination:

I am now in the same employ, attached to the Wyoming, of which I am the first officer; I have been in that employ all the time since 1871, running between here and Liverpool; I make a trip about once in 6 weeks; we were laid up last year for two or three months on the other side; it was my duty to keep the log on the Nevada; I have not lately seen the log that was kept of that voyage; I made no memorandum in reference to the leaving of the vessel outside of the log; I knew I was going to be examined as a witness here yesterday afternoon; the day before that I knew that the matter was brought up again; I say "again," because I heard about it before some years ago; I mean

120 by some years ago the time it happened, that is, on our return from that voyage; I had heard nothing about it from the time I returned from that voyage until 2 days ago; the first I heard about it was on my return from the voyage; when the vessel sailed I didn't know there had been any collision.

I don't remember anything particular about when the ship left on the voyage before this; I remember when she left on the voyage after this; nothing particular happened; I can't now give the exact dates of these departures; I don't remember what the weather was on the occasion previous to this or the occasion after.

Q. Have you testified to us as to what was done on this departure from any special memory that you have had of what was actually done on this occasion?

A. Yes.

Q. Wherein did what was done on this occasion differ from what was done on the previous occasion?

A. There was no difference.

Q. Wherein did what was done on this occasion differ from what was done on the occasion of your leaving afterward?

A. I suppose there was no difference in the general routine when we let go.

Q. What you have told us as having been done was the general routine, was it?

A. Yes.

Q. Do you remember in what part of the ship you were for an hour before the starting of the vessel on this occasion?

A. I can't tell any particular part.

Q. Have you any memory now of being at any particular part of the ship at any particular time during that hour?

A. Yes; I was on the bows of her, on the forecastle-head, about ten minutes before we started.

121 Q. Have you any special recollection which will enable you to say on that day the ship left at 3 o'clock, rather than 3.30 or 4?

A. Yes, sir; she left at 3, or a few minutes after.

Q. What makes you specially recollect that she left on that day at a few minutes past 3 rather than a few minutes past 4? - -

A. On account of the collision—hearing of that.

Q. Did I not understand you to say that you did not hear of the collision on that day?

A. I did say so; the reason why I recollect it is because of the collision.

Q. What connection is there between the collision and the question of whether the ship left at 3 or 4?

A. Because, hearing of it the next voyage, it has always been impressed upon my mind that the ship sailed at 3, and not at 4.

Q. What were you on the bow of that ship for just before she started?

A. That was my position.

Q. Do you remember how long you staid there?

A. Yes; from about ten minutes before we started until we got down to the Hook.

Q. Do you remember how the tide was when the ship went out?

A. Yes; it was flood, not particularly strong; I can't tell what time of tide it was.

The captain of the Nevada was Forsyth; I remember seeing him, when the ship left, on the upper bridge; the 3d officer was with him; his name was Owens; he is not connected with the ship; Captain Forsyth is still in that employ; he is in command of the Wisconsin.

Q. Can you give us the name of any other officer of the ship whom you recollect to have seen on board of her at the time of the departure?

122 A. Yes; Henry Gadd, the second officer; John Owens, the third, and John Moore, the fourth officer; that is all the officers; I saw Gadd right aft, on the wheel-house; I remember seeing him there; I don't remember seeing Moore anywhere in particular; the wheel-house is right aft on the stern; there is a house about 6 or 7 feet high above the deck; the Nevada was 346 feet long, I believe; her deck is not flush from where I stood to the wheel-house; there is between our smoke-stack the bridge-deck, and then comes the poop-deck, where the wheel-house is; the view is clear across, except the

smoke-stack; you can see under the bridge; I can't tell on which sid Mr. Gadd was standing when I saw him; more in the middle of th ship than anywhere else; I don't recollect anything that attracted my attention to him particularly; I had charge of seeing that all was clear forward.

The hawser that I have spoken of was a stern hawser.

Q. Was your attention attracted on that occasion to the stern hawser?

A. No.

Q. Can you give us the name of any of the rest of the crew whom you recollect to have seen on deck on that occasion?

A. Yes; two were named Edwards, who were quartermasters; Musgrove, a quartermaster; Smith, the boatswain; that is all I remember; I told the Edwards to ring the bells; one to ring one bell, and the other to ring the other; that was the first time the bells were rung; that was before I went to the forward deck; I was on the bridge-deck when I gave that order; I only gave them that order once; I recollect seeing Musgrove on the poop, at the wheel-house door; that was before I went on the forward deck; he was the man standing by; I remember seeing Smith forward; he was with me.

Q. Do you remember seeing the overlooker during the hour before the ship started?

123 A. Yes; on our decks and on Pier 46; I recollect seeing him on the deck pretty near all the time during that hour; I saw him off and on; his business was about the decks, and my business was too; I have no special recollection of seeing him at any place on the ship; I recollect seeing him on the pier about five minutes before we started; I spoke to him; he stayed in that position until the ship started; he was about fifteen feet from me.

The deck of the Nevada was about 12 feet above the water; that is, the upper deck; the after bell hangs about two feet above the deck, and the forward bell four to five feet above the deck; the Nevada had no bulwarks that rose above this flush deck.

The whistle is blown from the upper bridge; a man stands there and pulls a string; I gave the orders to try the whistles to the quartermaster, named Edwards, called Black Edwards; I gave him that order when I gave the other, to ring the bell the first time; I gave the order to ring the bell and try the whistle; Pier 46 was covered, and Pier 47 was covered too, except the outer end of it; there were large doors in the sides; the rest was sided up; the end of Pier 46 was clear too; the house began about 12 feet from the end of the Pier 46; the Nevada lay with her bow a little outside the house, if anything.

Q. Have you any recollection as to the number of people that were there on that day, as distinguished from any other sailing day?

A. It is my recollection that there were a good many people there, more than usual, on account of the large number of passengers; there were about 100 passengers; I am not positive as to the number of passengers; if the passenger list shows a small number of passengers, I shall be just as positive as to the number of people on the dock.

124 The Queen's bow was further out in the stream than the Nevada's.

Q. Have you talked over the occurrence of the vessel's leaving on that day with anybody since it occurred?

A. Yes; I have talked it over with Captain Dewar; I mentioned it yesterday; I have not talked about it with anybody else; I talked over it after it happened; I talked about it then with the officers that were

on the ship; I recollect talking it over with Gadd; Gadd is in the same employ now; he is on the Montana; I had the talk with Gadd after we returned to New York.

Q. Did he tell you that he heard a call to stop the engine of the ship just before she got out of the slip?

(Objected to as immaterial, unless for the purpose of contradicting, in which case the preliminary testimony should be offered.)

A. No, he knew nothing at all about it; I mean about the call, or the collision either.

Redirect:

On my return from that voyage I first heard of this collision.

Q. Did you then endeavor to recollect exactly what had taken place?

(Objected to.)

A. Yes; I talked it all over; the matter was then discussed by the officers, especially by Mr. Gadd and me.

I knew that after collisions there are very apt to be lawsuits.

125 Q. When you have testified that you remembered the circumstances of this voyage because of the collision, do you mean anything else than that you refreshed your memory as to the facts of this particular departure upon your return, because you learned that a collision had occurred?

(Objected to as leading.)

A. Yes; that is what I meant.

Q. Could a hawser have broken when the vessel started without your knowing it, although you couldn't see it?

A. It might have broken at the stern without my seeing it at the particular time, but I should have known it as soon as the ship got out. A part of the hawser would have remained attached to the ship with the broken end. I never saw such a part of a broken hawser, nor heard of one, on the ship on that voyage. If a hawser had parted, it would have been regularly reported to me. No such report was made to me, and I never heard of such a thing from any source.

The open gates on the side of the covering over the pier are of different widths—some 30 feet wide and some only 10. The doors are so close to each other that pretty near the whole side was open that day. The end of the shed towards the street is open; the end of the shed next the river is closed, all but a door, which was open that time.

Q. In your opinion, would the noise of departure from that pier differ from the noise of departure from an open pier?

A. Yes; there would be much more noise in leaving a covered pier.

Q. State whether seafaring men, or canal-boatmen, are usually familiar with the signs of departure in a steamship.

126 (Objected to.)

A. Yes, I think so.

Q. Do I understand you to say that Gadd knew nothing about the collision, or said he knew nothing?

A. He said he knew nothing.

Q. Would it not have attracted your attention if Gadd and the other officers had not been at their posts?

A. Yes.

Recross:

Q. Wasn't the smoke-stack in range between you and the wheel-house?

A. No; I could see the whole of the wheel-house by the smoke-stack—by its port side.

Q. Is there any reason why the breaking of a hawser would be reported to you, rather than any other incident of importance?

A. No.

Q. Is there any reason why the breaking of a hawser should have been reported to you any more than a collision?

A. Yes, because everybody would be likely to know about a collision, and not about the breaking of a hawser.

Q. Is not it a matter of duty to report to you just as much in one case as in the other?

A. Yes.

Q. Was there any report of this collision?

A. No.

Redirect:

Q. Is it not a part of your duty, as first officer, to report to the superintendent at Liverpool what ropes have been lost, so that they may be replaced?

A. Yes.

127 Q. So that you are the officer, rather than any of the other officers, to whom a report should be made in case of the loss of any rope?

A. Yes; I am responsible.

Q. Did you ever know before this of a collision of which no one about was aware?

A. Yes.

Q. Did you ever know a collision to occur which every one on board did not know of at once?

(Objected to.)

A. No, sir.

Q. Would it not be an extremely rare event for a collision to occur to the knowledge of some of the men of which you, as an officer, had no knowledge?

(Objected to.)

A. Yes.

Q. The breaking of a hawser or a rope on board is a common occurrence, is it not?

A. Yes.

Q. State the course taken by the steamer as she went out into the harbor.

A. The course is straight out into the middle of the river; but the flood-tide would take her bow further up, toward Pier 47.

Q. Did the stern of the Nevada, as you went out, swing over towards Pier 47?

A. Not as I remember.

Recross:

Q. In a flood-tide the effort is to turn the ship's head down-stream as soon as possible, isn't it?

A. Yes.

Q. How do you do that?

A. By putting the helm hard astarboard.

128 Q. Have you any recollection, as you went out in the river, of looking back to see how the stern was moving?

A. No.

Q. You say you never knew a collision to occur which was not known to those on board; do you think, then, that on the occasion of which you have been testifying there was no collision?

(Objected to.)

A. Yes.

Redirect:

Q. When a ship goes out from a pier into the harbor, being full tide, is the helm ever put hard astarboard until the ship gets clear of the pier?

A. That is a hard question to answer; the ship is steered straight out from the pier until her propeller is clear of the pier, when her helm is put hard astarboard, if the river is clear.

Recross:

Q. If the flood-tide caries the boat up, can you steer the vessel straight out without putting the helm to starboard?

A. No.

Redirect:

Q. Does the flood-tide necessarily carry the bow up as you come out?

A. Yes.

Q. Will it affect it enough so that you put the helm astarboard before you get clear of the pier?

A. Yes.

WILLIAM HOLMES.

129 HENRY GADD, a witness for claimant, examined de bene esse, before James H. Gilbert, U. S. circuit court commissioner at New York City, on March 1, 1877, having been duly sworn, testified as follows:

I reside in the town of Liverpool, England; I am a mariner; I expect to leave the port of New York next Tuesday for Liverpool; I know the steamship Nevada; I was second officer of her in September, 1871; I remember her departure from the port of New York on September 27th, 1871; I was on board at the time of her departure; I was aboard all day on the day she left; the steamer lay that day on the north side of Pier 46, North River; during an hour previous to her departure I was about the decks, and I was on the wheel-house about five minutes before she left, and stayed there until she got clear out into the river; the bells of the Nevada were rung about a quarter of an hour before she left, at different intervals, about two or three times; I couldn't be certain; they were well rung; there were two bells on board, and both were rung; the first ringing was about a quarter of an hour before her departure; the last ringing was about a minute before the gangway was hauled ashore; the ship went out, I should think, about three minutes after the last ringing; the period of ringing would continue about a minute and one-half sharp ringing; the large bell was about 18 inches in height and 12 inches across the bottom; the small one was about nine inches high and seven to eight inches across the bottom; the large bell was placed a little before the middle of the ship, before the smoke-stack; it was on the upper deck, which was about 12 to 14 feet above the water, and the bell was hung about six feet above the upper deck, in the open air, in a place appointed by the government officers in Liverpool; it was placed there so that it might be heard distinctly outside the ship in fogs; the little bell was on the saloon-deck, about 100 feet from the stern of the ship, and be-
130 tween three and four feet above the deck, in the open air.

I was connected with the Nevada for about three years; I am

familiar with the distance at which those bells can be heard; the big bell, if well rung, can be heard about half a mile.

From where the Nevada lay to Pier 47 is about 400 feet, I should think

The whistle was blown about the time the ship started, and while she was going out; it was blown first before the gangway was hauled in, so as to give notice to the people on board to go ashore; it was blown first about 10 minutes before the ship started, a good long blow, for about half a minute; the long blow, when the ship started, began about a minute or a minute and a half before she started, and continued until she got clear into the river; I should think, from what I know of steam-whistles, from having been in ships with whistles, that this whistle could be heard about four miles; it was not different from other whistles.

Q. If there was anything about the weather that day, or any other facts to prevent the transmission of sound, please state them.

A. The day was a beautiful, clear, summer day, and there was nothing to prevent the whistle and bells from being heard.

The whistle was placed about 10 feet above deck, in the open air; under the regulations of the English board of trade.

When we are going to sail we fly a blue-peter all day, and just as we are about to sail we set the American ensign, which was in a ball at the masthead; the blue-peter is taken down at the moment
131 of sailing and the American ensign is unfolded; until the American ensign is unfolded it is not visible; it is unfolded at the moment of departure; this is a custom with all steamships, and a seafaring man would understand it.

I couldn't say how many passengers there were that day; there were a great many people about the deck that day before we sailed; the crowd had been there for an hour or more before we sailed; the crowd were on such parts of the ship that they could be seen distinctly from Pier 47, and from small craft lying between the piers; to the best of my judgment there were about 300 people about the deck that day before we sailed; there are no other occasions except the departure of a ship when that number of people congregate about the deck of a ship; the people were about ten minutes to a quarter of an hour getting off the gangway before the ship left.

Pier 46 was crowded with carriages and teams at that time; the cargo was finished, and baggage and the mails were being taken aboard just before she left.

There was no noise in giving the order to cast off.

We had a man whom the manager used to send around to warn anything that was in the way or likely to be sucked over by the propeller; I don't know whether or not he was sent around that day.

On that day I looked over the stern about five minutes before she started, and I cautioned every craft within hailing distance that we were going out, and to be careful and look out for the propeller;
132 I couldn't say how many people I addressed; about half an hour before we started we tried the engines.

There were a lot of barges lying alongside the Queen, which I hailed, and others up at the end of the pier, which I hailed too; by barges I mean canal-boats; when I hailed them I said, in substance, that we were going out, and told them to look out and make fast, and look out for the suction of our propeller; there were two or three people on each barge, as near as I recollect; sometimes only one; when I hailed them they answered "all right;" I was on the saloon deck, on the stern; that

was before I went up on the wheel-house, from five to ten minutes before we started.

My business, when the ship went out, was to see that the ship was properly steered out; that the orders from the bridge were properly attended to. The ship went straight out into the stream; her stern did not swing off from Pier 46 a bit; it was no further from the pier than her bow.

There was no hawser broken on the ship as she went out; if the stern hawser had broken as she went out I must have known it, because I was there; nothing whatever happened to check the movement of the ship as she went out into the river.

Cross-examination:

I left the Nevada about three years ago; I have been in this company ever since, in the Idaho, Wyoming, and Montana. I have held no other position since than second officer and my present position; I was three years in the Nevada; I was fourth, third, and afterwards second officer; I had been second officer of the Nevada in September, 1871, for about eighteen months, during which time my duties
133 were about the same; as nearly as possible the same occurrences happened each time the steamers departed; what I have stated was the usual occurrence when the Nevada departed; I recollect about ten departures of the Nevada during the eighteen months when I was second officer; the first of those was about eighteen months before the one in question. I can't be certain whether on that day there were any craft lying between the piers, or whether I warned any; I recollect, before the departure in question, warning a lot of barges lying alongside the City of Brussels; at that time we were lying on the south side of Pier 46; I don't recollect the specific times when I have warned vessels before September 27th, 1871, except the instance I have stated, but it was my custom to do so.

I don't recollect the departure of the Nevada prior to September 27th, 1871; I don't recollect what sort of a day it was nor how many bells were rung; I don't recollect anything particular about it; I left the Nevada after making one more voyage after the one in question; there are a good many things in my mind in connection with that last voyage; I couldn't tell at what time we sailed from New York on that last voyage nor what kind of a day it was; I have no recollection as to how the ship went out on that voyage, but they always go out straight; they can't go out any other way, because if they move to one side they are brought up by a mud-bank; I remember quite distinctly going out straight on the 27th of September, 1871, but I don't remember about the voyage after; I remember it, because I heard of the collision afterwards, and I have kept the facts in my memory ever since.

The 300 people I have spoken of were on the upper deck at the same time; there were from 30 to 40 cabin passengers and about 100 steerage; the steerage passengers were all about the deck, about
134 the forecastle-head, and wherever they could see over the rail; they were visible, too; a good many people came to see steerage passengers off.

I will not swear that there were more than 20 cabin passengers on that voyage, or that there were more than 15.

I heard of the collision in Liverpool and took no more notice of it, because I didn't know whether there was any truth in it; the captain of the Nevada told me; he was the first one that I talked to about it.

The next conversation I had about it was with the chief officer, Mr.

Holmes; as near as I can recollect, this was at New York; I had not talked with any one about it; in the mean time Mr. Holmes and I made the return voyage in the Nevada; we had no talk about the collision in the passage to New York; after we got to New York we talked it over at my mess-room table; the captain first told us about the collision; he said a telegram had come from New York that a barge had been sunk, and asked me if I knew anything about it; I told him no; I have talked the collision over with Mr. Holmes when I have met him since, both in New York and in Liverpool; there were present at the talk at my mess-room table the third officer, Mr. Owens, the fourth, Mr. Moore, and the chief officer.

Pier 46 is about 500 or 600 feet long; the Nevada is about 340 to 350 feet long and 43 feet in beam.

I stood on top of the wheel-house; the top is about 8 feet above the saloon-deck and about 24 feet from the water.

I hailed each craft; I didn't hail once for each craft; sometimes two were tied together, and then I only hailed once for both.

135 Redirect:

There was no notice given to the passengers' friends to leave the ship beyond the bells and whistle, except a hand-bell rung in the saloon; it is a fact well known that steamers give notice of their departure by ringing bells, and people who come to see friends off rely on that.

Recross:

I couldn't say how many craft I hailed on the day we departed; I went round and hailed them, and saw they attended to it; I hailed them half an hour beforehand and ten minutes before leaving; some of them would answer all right and some would wave their hands; that occurred on that occasion and is the usual occurrence; sometimes when we go out there are no barges there.

I kept no memorandum of what occurred; I came into port this time last Saturday; the last time I talked about the collision before I arrived in port this time was the last time I was here, when I talked with Captain Dewar; I knew I was going to be examined day before yesterday.

HENRY GADD.

WILLIAM EDWARDS, a witness for claimant, examined under a commission, before Lucius Fairchild, U. S. consul, commissioner at Liverpool, England, on April 18th, 1877, being duly sworn, testifies as follows:

Direct examination:

Q. What is your name, age, residence, business or occupation, and place of business or occupation?

136 A. My name is William Edwards; I am thirty-three years of age; I reside at No. 46 Sandhey street, Liverpool; I am a sailor and stevedore at Liverpool.

Q. Were you connected with the steamship Nevada in September, 1871; if yea, in what capacity, and state how long and in what capacities you had been connected with said steamship prior thereto, and also with any other vessels?

A. I was connected with the steamship Nevada in September, 1871, as quartermaster; I was for twelve months an able seaman and for eighteen months a quartermaster in her prior thereto; prior to joining the Nevada I was a seaman in various ships for over twenty years.

Q. Do you recollect the departure of the Nevada from Pier 46, North

River, New York City, on a voyage to England, on September 27th, 1871; if yea, where were you from an hour prior to such departure until after the Nevada left the pier?

A. I recollect the departure of the Nevada from Pier 46, North River, New York City, on a voyage to England, on September 27th, 1871; from an hour before the ship left I was at the passenger gangway, which was placed from the pier to the after part of the bridge-deck, giving directions and information to passengers, until about a quarter of an hour before the ship left the pier, when, by the first officer's direction, I went forward on the bridge and rang the bell and blew the whistle, and then returned to the gangway, where I remained until a few minutes before the ship started; after that I went again to the bridge, where I remained till the ship was clear of Sandy Hook.

Q. State in detail and with particularity what occurred upon and about said steamship during said hour, and until the said steamship was away from Pier 46 on her voyage; state particularly whether any bells were rung; if so, how many bells, what was their size and situation on the ship, how far could they be heard, how many times they were
137 rung, who rung them and who ordered them to be rung, for how long a time were they rung, and how long before the Nevada left the dock; state also the same facts, if any, in relation to the steamer's whistles; also whether steam was escaping during said period, and whether any noise, and, if so, how much, was made thereby; also whether the blue-peter was raised and the American ensign, and, if so, in what condition, and what, if anything, was indicated thereby; also whether there were passengers and friends of passengers and other persons about the Nevada and the pier prior to her departure, and, if so, how large was their number, in your opinion, and where were they principally; also whether there were teams and carriages about the pier, and whether baggage was being taken aboard; also whether just before sailing the passengers' friends left the ship; describe generally the noise and indications of a steamship's departure on a voyage, and all that took place on this occasion, and state all the facts which occurred, if any, which, in your opinion, might have naturally led persons on or about Pier 47, or on vessels between Piers 47 and 46, to know or suspect that the Nevada was about to put to sea.

A. During the said hour the usual preparations for the departure of the ship were being made, so far as I know and my observation extended. Two bells were rung; one of them was on the forepart of the bridge-deck, suspended from the centre of the upper bridge, and about seven feet above the bridge-deck. This bell was about two feet deep and eighteen inches in diameter, and could be heard about three-quarters of a mile. The other bell was on the fore part of the saloon-deck, hung on a frame fastened to the ventilator-hatch. This bell was about eight or nine inches in diameter, and about twelve inches deep, and could be heard about a quarter of a mile. I rang the larger of said bells on two occasions, the first time a quarter of an hour before the ship started, and the second time just before she started.
Both times I rung said bells by the direction of the chief
138 officer, and left it ringing about a minute and a half. Another man, a quartermaster, of the same name as myself, known on the ship as "Red Edwards," rang the other of the said bells at the same time and in the same manner. The fog-whistle was blown by me immediately after I had rung the bells on each occasion. It is a big steam-whistle, about eight or nine feet above the deck, on the fore part of the funnel. I blew a long, loud blast each time, and that by direction of

the chief officer. Steam was escaping during the same period and making a great noise, which could be heard one-half of a mile away. The blue-peter was flying and had been so all day. The American ensign was raised in the place of the blue-peter as the ship got under weigh.

The blue-peter was flying at the foremast-head, and was notice that the vessel was about to sail, and the hoisting of the American ensign was notice that she was actually starting. There were passengers and their friends on the pier and about the decks of the Nevada, but although there were many such persons, I am unable to estimate their number. They were principally on the pier, shaking hands with their friends as they came on board. There were teams and carriages about the pier, and baggage and mails were being taken on board until just before the vessel was cast off. Just before she sailed the passengers' friends left her. The ringing of bells, blowing of the steam-whistle, blowing off steam, taking on board passengers' baggage and mails, leave-takings of passengers and their friends, people collecting about the pier, are the usual indications of a steamship's departure on a voyage, and all such things took place on this occasion, and should have naturally led persons on or about Piers 47 and 46, or on vessels between Piers 47 and 46, to know or suspect that the Nevada was about to put to sea.

139 Q. Did one of the Nevada's hawsers break at the time she left Pier 46?

A. I do not know whether a hawser broke at the time the Nevada left Pier 46. I was on the bridge at the time.

Q. Do you know anything further of advantage to the claimant? If yea, state it fully, as though particularly interrogated thereto?

A. I do not.

Cross-examination:

Q. State in whose employ you now are, and for how long a time you have been so employed. If you have said in answer to a direct interrogatory that in September, 1871, you were connected in any capacity with the steamship Nevada, state how long you remained so connected. Were you ever in the employ of the owner of the Nevada upon any other of his vessels? If so, which one or ones; when, and for how long a time, respectively? State when you ceased your connection with the Nevada, and for what cause.

A. I am now in the employ of Messrs. Durant & Mac, of Liverpool, ship-owners and master stevedores, and have been in their employ off and on for the last three years. I remained a quartermaster of the steamship Nevada for about a year and a half after September, 1871. I made two Atlantic voyages on the steamship Minnesota, belonging to the owners of the Nevada, but have not been otherwise in their employ. I left the Nevada of my own accord, at the time I have stated, being desirous to live ashore.

Q. If you have answered the first part of the second direct interrogatory affirmatively, whom of the ship's officers and crew do you remember seeing on the ship? State their names, and where they were standing, and what they were doing. Did you ring any bells at any one's command about that time? How many bells were there on the

140 Nevada? Where were they situated? Which one did you ring at that time? At whose command? Where was he standing when he gave you the command? Did you, about the same time, blow a whistle? Was it before or after, or at the same time, that you rang the bell? Did you change your position after blowing the whistle before ringing the bell? In what respect? Did you ring either of the

bells a second time? Which one? When? How long before starting? At whose command? How long did you ring it? Had you changed your position in the mean time? Did you blow the whistle a second time? For how long a time? How long before the ship left the slip? At whose command? Where was he standing when he gave the command?

A. I remember seeing Captain Forsyth, master; Mr. Holmes, chief officer; Mr. Gadd, second officer; Mr. Owens, third officer; and Mr. Moore, fourth officer, on the ship. Up to the time of the vessel's starting the officers on duty were about the ship attending to her business. The captain came on board shortly before she left. At starting, the captain, third officer, and pilot were on the bridge, the chief officer on the forecastle-head, the second officer aft, attending to the hawsers, &c., and the fourth officer at the bow. About that time I, as I have already deposed, did ring a bell, by command of the chief officer. There were two bells on the Nevada, situate on the bridge-deck and saloon-deck, as I have already described. I rang the one on the bridge-deck by command of the officer. When he gave me the command he was standing on the forecastle-deck. I blew the whistle after I rang the bell on two occasions, as I have deposed. On the first occasion after blowing the whistle I returned to the passenger-gangway and remained there till ordered by the chief officer to ring the bell and blow the whistle again, when I returned to the bridge-deck and did so. I rang the bell on the bridge-deck the second time, a few minutes before starting, at the same command. I rang it for about a minute and
141 a half. I had changed my position, as I have deposed, between the first and second time of my ringing the bell. I did blow the whistle a second time for about a minute or a minute and a half, and that before the ship left the slip or pier. This was by the command of the chief officer, who was then standing on the forecastle-deck.

Q. Do you remember the departure of the Nevada from New York upon the voyage immediately preceding the one you have testified about? What was the date of it? State the same facts, if you remember them, in regard to it, which have been asked in the second cross-interrogatory, concerning the voyage commenced on September 21, 1871.

A. I do remember generally the departure of the Nevada from New York upon the voyage immediately preceding the one I have testified about; I cannot remember the date of that voyage; the captain and officers were the same and occupied the same positions, and as I always took the bridge to take soundings as the vessel left New York, I know I rang the bell and blew the whistle; I did so twice in the same manner, as I have previously deposed to, and by the like command, such being the regular routine of the ship.

Q. Do you remember the departure of the Nevada from New York upon the voyage immediately succeeding the one commenced on September 27, 1871? What was the date of it? State the same facts in regard to it which have been asked in the second cross-interrogatory concerning the voyage commenced on September 27, 1871.

A. I do remember generally the departure of the Nevada from New York upon the voyage immediately succeeding the one commenced on September 27, 1871; I do not remember the date of it; the captain and officers were the same and occupied the same positions, and for the reasons before stated I know I rang the bell and blew the
142 whistle, and did so twice in the same manner as I have previously deposed to, and by the like command, such being the regular routine of the ship.

Q. Have you any special recollection of the voyage begun on the 27th day of September, 1871, which enables you to testify concerning it more fully than of the preceding or succeeding voyage? If so, state the reasons for it.

A. I have a special recollection of the voyage begun on the 27th day of September, 1871, which enables me to testify concerning it more fully than of the preceding or succeeding voyage, from the circumstance that on my return to New York I heard we had sunk a grain-barge as we left the pier.

Q. Is what you have stated as occurring immediately prior to your departure upon the voyage of September 27, 1871, given by you as the result of any special present recollection on your part of what then occurred, or is it simply given as a general recollection of the routine duties which were usually and ordinarily performed before a voyage was begun? Is it not true that what you have stated as occurring at this time were the ordinary and usual duties performed before a voyage was begun?

A. What I have stated as occurring immediately prior to our departure from New York upon the voyage of September 27, 1871, has been given by me as the result of a special present recollection on my part of what then occurred; the statement that we had then sunk a grain-barge, of which no one on board knew anything, having led to my thinking it over; what I have stated as occurring at that time were the ordinary and usual duties performed before a voyage was begun.

Q. In what capacity were you employed on board the Nevada? What were your duties? Explain their nature in detail. Were they of a routine character? On each successive departure of vessels from New York did you perform the same duties precisely? Wherein
143 did your duties differ from those of William Edwards, if there were another person of that name on the Nevada at that time?

A. I was employed on the Nevada in the capacity of quartermaster; my duty was steering and sounding whilst at sea, looking over gangways, ringing the bells, blowing the steam-whistle, and obeying my orders from the officers of the ship; they were generally of a routine character; on each successive departure of the vessel from New York, I performed the same duties precisely; my duties differed from those of the other William Edwards on starting from New York, as I had to ring the bell on the bridge-deck and blow the steam-whistle, whilst he had to ring the bell on the saloon-deck and steer the vessel out.

Q. Do you know of any collision occurring on the 27th day of September, 1871, between the Nevada and a canal-boat, in the slip between Piers 46 and 47, before the Nevada's departure from the slip; did you see it; when did you first learn of it; who told you of it; do you recollect conversing on the subject with a certain captain of a tow-boat, on the return voyage from Liverpool, after the collision is said to have occurred; what passed between you on the subject; mention the names of all whom you have talked with on the subject since that day; what was said; what impressed the date of that voyage upon your memory; have you talked with any one on the subject of the collision during the past two or three months; with whom; what are their names and occupations; did they, or either of them, refresh your memory upon any points which you have testified about; on which ones; are they, or either them, present while you are being examined; mention which one or ones by name; do you know William Holmes; have you seen his testimony in this suit; have you read it; has it been read to you; have the contents of it, or any part of them, been made known to you; have the interrogatories, or cross-interrogatories, or any

144 part of them, annexed to this commission, been read by you, or to you, or was their substance stated to you, in whole or in part, prior to your examination?

A. I do not personally know of and did not see any collision between the Nevada and a canal-boat in the slip between Piers 46 and 47 before the Nevada's departure from the slip; I first heard of such a collision on the next occasion of my arriving at New York; I do not remember who told me of it first; I think it was some one on the wharf; I do not remember conversing on the subject with any captain of the tow-boat on the return voyage from Liverpool, after the collision is said to have occurred; I have talked about alleged collision with my mates in the forecastle, but not with any one else that I can remember, and we only mentioned the matter to one another; the alleged collision impressed the date of that voyage upon my memory; I have not talked about the collision with any one during the past two or three months, but I was recently told by Captain Holmes, and Mr. Dickenson, one of the solicitors to the owners of the Nevada, that I should be wanted to give evidence in reference thereto.

My memory has not been refreshed by any one in reference to any points upon which I have testified; the said solicitor is present on my being examined; I know William Holmes; he is the Captain Holmes I have mentioned; I have not seen or read his testimony in this suit; the contents of his testimony have not been either wholly or partially made known to me.

Neither the interrogatories nor cross-interrogatories annexed to the commission, nor any part of them, have been read to me or by me, nor has their substance been stated to me, in whole or in part, prior to my examination.

145 Q. Prior to the departure of the Nevada upon the voyage of September 27, 1871, were you standing where you could see all the hawsers of the steamer Nevada? Do you recollect a hawser breaking during any voyage made by the Nevada while you were connected with her? State all the circumstances of the occurrence, or, if more than once, each time it has happened to your recollection. Did you ever see one break? State the circumstances under which it broke.

A. I was not standing where I could see all hawsers of the steamer Nevada prior to her departure upon the voyage of September 27, 1871. I do not recollect a hawser breaking during any voyage made by the Nevada while I was connected with her, or seeing any hawser of her break.

Q. Have you ever been called "Black Edwards"? Were you so called on the Nevada by any one; and, if so, by whom?

A. I was called "Black Edwards" on board the Nevada by officers and crew, to distinguish me from another William Edwards, also a quartermaster in her when I was in her, and who was called "Red Edwards."

Q. How long since you were in New York?

A. I have not been in New York since I left the Nevada, three years ago last Christmas.

Q. Do you know any other fact of advantage or benefit to the libellant in this cause? If so, state it as fully as though particularly interrogated thereto.

A. I do not know of any other fact of advantage or benefit to the libellant in this cause.

his
WILLIAM + EDWARDS.
mark.

WEDNESDAY, *October 17th*, 1877.

JOHN REARDON, a witness called by claimant, having been duly sworn, testified as follows:

146 Examined by Mr. HOLT:

Q. What is your business?

A. Sandy Hook pilot.

Q. How long have you been such?

A. 16¼ years.

Q. Did you take the steamship Nevada to sea Sept. 27, 1871?

A. I did.

Q. What time in the day did she sail?

A. Three o'clock in the afternoon.

A. How long before she sailed were you at the pier?

A. One hour.

Q. What occurred that day before the ship sailed?

A. Nothing that I know of.

Q. Do you recall whether any notice was given of the sailing of the vessel by ringing of bells or otherwise?

A. Yes, sir; bells were rung three different times before the ship sailed.

Q. How long before the ship sailed were these different times?

A. The first bell about half an hour, the second one about a quarter, the last one about five minutes before she sailed.

Q. How many bells were there?

A. There were several in succession.

Q. How far could you hear them?

A. The length of the ship.

By the COURT: What do you mean by several bells in succession?

A. They struck several times in succession at each time.

By the COURT: The same bells?

A. Yes, sir.

Q. Could persons on Pier 47 hear those bells?

A. Yes, sir.

Q. Or on any vessels lying between Piers 46 and 47?

A. Yes, sir; anywhere in the neighborhood.

147 Q. Were there any whistles blown?

A. Yes, sir; twice before the ship started.

Q. How long before?

A. 2 or 3 minutes.

Q. That is the first one?

A. Yes, sir.

Q. Then, when was the second one?

A. The first whistle blew before we started, and the last one while we were in motion, moving out of the dock.

Q. How far could that whistle be heard?

A. It could be heard all around the neighborhood. I could not tell you how far.

Q. It could be heard as far as Pier 47?

A. Yes, sir.

Q. Were there passengers on the vessel?

A. Yes, sir.

Q. How many were there; a large number or a small number?

A. There appeared to be a good many; I could not tell the number.

Q. Were there persons about the pier at the time the ship sailed?

A. Yes, sir; there was a crowd of people on the pier.

Q. Did you notice what other vessels or craft were lying in the slip before she sailed?

A. I noticed the steamship on the other side of the slip from where the Nevada lay.

Q. Did you notice any canal-boats or other small craft?

A. I noticed an elevator and some canal-boats.

Q. Did you take any notice before the vessel sailed to see whether the vessel was clear?

A. Yes, sir.

Q. What did you see in that regard?

A. I looked over the side to see whether everything was clear before we started.

Q. How was it in that regard?

A. They appeared to be about 40 feet from the ship on the opposite side of the slip.

148 By the COURT: What appeared to be?

A. The canal-boats.

Q. The steamer started about three o'clock, as I understand you?

A. Yes, sir.

Q. Did it go immediately out into the river?

A. Yes, sir.

Q. Describe the way in which the steamer went out; did it go straight out?

A. Right straight out from the dock, from where she lay.

By the COURT: Where were you standing?

A. On the bridge, on the starboard side.

Q. How near did the stern of the Nevada keep to Pier 46 as the steamer went out?

A. Right close along it.

Q. The whole distance out?

A. The whole distance out, as near as I can tell.

Q. Do you know as to the condition of the slip between Piers 46 and 47?

A. I know there was a mud-bank in it; very little water in the middle.

Q. How far below the surface of the water was this mud-bank in the middle of the slip?

A. I do not know. I know the ship, drawing 21 feet, grounded on it.

By the COURT: At that time?

Q. The voyage before.

By the COURT: This same ship?

A. Yes, sir.

*A. Yes, sir.*

By the COURT: How long before was this?

A. About 9 days before.

By the COURT: Drawing 21 feet?

A. Yes, sir.

Q. Could the Nevada, at the time she went out there, have swung across to Pier 47?

A. No, sir; not the way she went out.

By the COURT: That is, if she went out straight she did not swing across?

A. No, sir.

149 Q. Did you see this collision?

A. No, sir.

Q. What was the state of the tide at three o'clock, when the steamer went out?

A. First quarter of the flood.

Q. What effect would the tide have at that time, if any, upon the steamer as it went out?

A. It was slack water along the docks, and the tide was running down along the middle of the river; consequently we went right straight out.

Q. How was the helm of the Nevada as she went out?

A. The helm was amidships until she got clear of the dock.

Q. Was it moved at all as she went out?

A. No, sir; not until she got clear of the pier.

Cross-examined by Mr. BENEDICT:

Q. You say you did not see this collision?

A. No, sir.

Q. Did you know at the time that there was any collision?

A. Not until afterwards.

Q. Did you know at the time?

A. No, sir.

Q. Did you go down with the steamer?

A. Yes, sir.

Q. Do you know when you got back to New York?

A. That same night.

Q. How did you come back?

A. Came back in a tug-boat from Sandy-Hook.

Q. Do you know what tug-boat?

A. No, sir.

Q. Was that the tug-boat that went down with the Nevada?

A. No, sir; one that towed another ship to sea.

Q. Have you any positive recollection about that as occurring on this trip, Mr. Reardon?

150 A. Yes, sir.

Q. What makes you recollect it as occurring on the 27th of September rather than the 27th of October?

A. Because I have not had that ship since.

Q. That was the last time you had it?

A. Yes, sir.

Q. Had you had her before?

A. Yes, sir.

Q. When did you have her before?

A. About a year before in, but not out.

By the COURT: Did you never have her out except on this occasion?

A. No, sir; I have brought her in since that.

Q. Have you any means of fixing the date when you had her out? How do you know that it was on the 27th of September?

A. Because we keep a record of all that occurs.

Q. Where is that record?

A. At the office.

Q. When did you look at it?

A. Several times since that—latterly this morning.

Q. When did you first look at it?

A. Not until Captain Dewar told me about the collision, two or three months afterwards.

Q. The first time that you heard about the collision was two or three months after it occurred?

A. Yes, sir.

By the COURT: Do I understand you that the record was made by you at the time? Did you make the record?

A. No, sir; our agent; he recorded it on that day—the 27th; that was the day that I took it to sea.

By the COURT: September, 1871, was it?

A. Yes, sir.

Q. Where did you see that record?

A. 104 South street, the pilot office.

151 Q. Did you bring this ship, the Nevada, in when she came in that time?

A. No, sir; but I put her to the dock; my partner came up with the ship.

Q. You put her in the dock?

A. Yes, sir.

Q. Was that the only time that you ever put her in dock?

A. No, sir.

Q. When did you ever put her in dock besides that?

A. I put her in a year ago last month.

Q. Are these two the only times?

A. Once previous, about two years previous.

Q. About 1869?

A. Yes, sir.

Q. By the COURT: And once since 1871?

A. Yes, sir.

Q. Do you recollect who was on the bridge with you?

A. The captain.

Q. Do you recollect what his name was?

A. Forsyth.

Q. Do you recollect which side of the bridge he was standing?

A. He was walking backwards and forwards.

Q. Did you give any orders previous to the starting of the vessel?

A. No, sir.

Q. When the vessel started do you recollect whether you were looking forward or aft?

A. I was on the bridge.

Q. Do you recollect whether you were looking forward or aft?

A. I was looking first forward and then aft, to see that everything was clear as we went out.

Q. Do you recollect, when the vessel started, whether you were looking facing forward or facing aft?

A. I cannot tell that.

152 Q. After the vessel started did you keep watch of her stern, or did you look forward?

A. I looked forward and aft both, one after the other.

Q. You were on the starboard side, you say?

A. Yes, sir.

Q. Did you stay on the starboard side?

A. I walked backward and forward several times, as we were going out of the slip.

Q. Do you mean to say that your recollection about that affair six years ago is so clear that you are able to say whether you stood on the starboard side all the time, or whether you walked backward and forward?

A. I am not in the habit of standing still.

Q. Are you able now from recollection to swear whether you stood

in one spot as that vessel went out, or whether you went to the other side of the ship?

A. No, sir; I could not swear that.

Q. Are you able to swear from recollection whether you looked astern as the vessel went out or not?

A. Not from recollection.

Q. Are you able to swear from recollection how many times the whistle was blown?

A. Yes, sir.

Q. From recollection?

A. No; not from recollection.

Q. You are not able to swear from recollection how many times the bells were struck?

A. No, sir.

Q. Are you able to swear from recollection exactly what stage of the tide it was?

A. Not from recollection; from the tide-table I can.

Q. Then your evidence in relation to how the tide was is taken from the table, is it?

A. Yes, sir.

Q. Have you the tide-table here that you looked at?

153 A. No, sir; there is a copy of the same one here.

Q. What did the tide-table say that you looked at?

A. It gave the time of high and low water; high water, Sandy Hook, 6.55, New York 45 minutes later.

Q. What kind of tide do you say that would give at New York at 3 o'clock?

A. About the first quarter of the flood.

Q. The tide had been running an hour and a half at that time, had it not?

A. It would make flood in New York City, but not up the North River.

Q. If high water is 7.32 what time is low water?

A. Half past one.

Q. Then the tide had been running flood an hour or hour and a half?

A. Yes, sir; the tide was swelling, but not running up.

Q. An hour and a half after low water the tide does not run up?

A. Not up the North River.

By the COURT: You mean after this book says it is low water that the surface water in the North River continues still to run down for an hour and a half?

A. Yes, sir.

By the COURT: And you tried to strike the bar at the time the book says it is high water down there?

A. Half an hour before.

Q. Have you any recollection as to the number of canal-boats that there were in that slip?

A. No, sir.

Q. Do you recollect anything as to whether there was more than one elevator?

A. I do not remember of seeing but one.

Q. Do you remember that you saw that?

A. Yes, sir.

Q. Do you remember what order you gave first on board of the vessel?

154 A. I gave no order until the ship was straightened ahead down the river.

By the COURT: You gave no order whereby she got straightened?

A. No, sir; the captain did it all.

Q. Do you remember of looking to see how the wind was before you started?

A. I do not remember, sir.

Q. Do you remember hearing any order given with reference to the wheel?

A. Yes, sir.

Q. What was the first order that you remember of having heard?

A. Hardastarboard; you mean the steering-wheel?

Q. Yes. Do you remember where the vessel was when you heard that order? Testify from your recollection.

A. I recollect; it was almost out on the line of the end of the pier; her stern was almost out, as near as I can judge from the position we were in.

Q. Do you remember whether there were any vessels lying at anchor off there?

A. Yes, sir; several vessels at anchor in the North River.

Q. Do you remember how near that pier they lay?

A. Nowheres near that pier; farther off near the Jersey shore and down below farther.

Q. Do you remember whether you went down between there and the New York shore?

A. We went right through the center of the river; down the middle of the river.

Q. Do you remember the position of the vessels?

A. I cannot remember the position; I know they were there.

By the COURT: How do you remember it; merely because they must have been there?

A. There are always vessels anchored in the North River.

155 Redirect examination by Mr. NASH:

Q. This order that you say you heard given would have the effect to head the steamer down the stream?

A. Yes, sir.

Q. If before that the stern had swung off would you have noticed it?

A. Yes, sir.

Q. How soon do you say it was after your return before attention was first called to the fact that a collision had taken place?

A. Two to three months afterwards; I could not tell the day.

Q. By whom was your attention called to it?

A. By Captain Dewar.

Q. Did he state that somebody had made a claim?

A. He said we had sunk a canal-boat.

Q. Was your attention then called to the circumstances that took place that day?

A. Yes, sir.

Q. And your recollection was then fresh on the subject?

A. Yes, sir; and I have kept it in my memory since, as near as I could.

Q. You said something about mud in the slip; where was it, in reference to this diagram (showing witness diagram)?

A. Right in the centre of the slip.

Q. Could the vessel have got out that day without going out substantially straight?

A. Not very well; she would have fetched up on the mud.

Q. She would have fetched up on the mud if she had swung over any considerable distance?

A. Yes, sir.

Recross by Mr. BENEDICT:

156 Q. It would depend entirely upon how much she went over as to whether she fetched up on the mud-bank. She might go over and touch the mud-bank and come off; might she not?

A. Yes, sir.

DOUGLAS DEWAR, a witness called by claimant, having been duly sworn, testified as follows:

Examined by Mr. HOLT:

Q. What is your business?

A. A timekeeper on Pier 53.

Q. In whose employment are you?

A. Williams & Guion.

Q. You have a chart in your hand; did you make certain measurements of distances in connection with Piers 46 and 47?

A. Yes, sir.

Q. Are the distances put down upon this chart correct?

A. Yes, sir.

Q. That is the width of the slip between Pier 46 and 47, is it, 205 feet?

A. Yes, sir.

Q. (By the COURT.) Did you measure that?

A. Yes, sir.

Q. (By the COURT.) Yourself?

A. Yes, sir.

Q. What is the length of Pier 46 from the bulkhead to the end of the pier?

A. 630 feet.

Q. (By the COURT.) Did you measure that?

A. Yes, sir.

Q. The length of Pier 47?

A. 624 feet.

Q. And the length of the Nevada?

A. 355 feet.

Q. The length of the Queen?

A. 381.

157 Q. Did you also measure the width of these elevators, the Metropolitan and the Scotia?

A. Yes, sir.

Q. Do you remember how much they were?

A. (Referring to memorandum.) The Metropolitan is 87 feet long and 24 feet wide; the Scotia 91 feet long and 26 feet wide.

Q. The lighter Julia?

A. 65 feet long and 23 feet wide.

Q. Do you know whether canal-boats differ in size or not?

A. They do.

Q. To what extent?

A. They run from 16 feet to 17 feet 6 in. wide, I think; I measured several.

Q. These canal-boats here do not indicate any particular canal-boats?
A. No, sir.
Q. What did you do with these measurements?
A. I gave them to the young man of Mr. Jennings, the architect in Broadway.
Q. Did you give Mr. Jennings the measurements showing the positions along the pier where the Nevada and the Queen usually lay?
A. Yes, sir.
Q. The "berth" of the Nevada?
A. Yes, sir.
Q. When the Nevada lay at her usual berth how far was her bow from the end of Pier 46?
A. 13 feet, I believe; she lay on the north side of Pier 46.

Cross-examined by Mr. BENEDICT:

Q. When did you take these measurements?
A. I could not tell the exact date. It was before 47 was pulled down. I suppose it would probably be over a year ago—some time about there.
Q. Has there been any change in 46?
A. 46 is down now.
158 Q. How was it as to 46; what time did you take these measurements?
A. 46 was as it originally was, when it was all standing—before the pier was cut up.
Q. How long have you been there?
A. I have been with the company, Williams & Guion, since a year ago last April.
Q. It was since a year ago last April that you took the measurements, was it?
A. Yes, sir.
Q. Do you know what changes, if any, had been made in reference to Piers 46 and 47 previous to that time?
A. There were no changes made.
Q. I am asking of your personal knowledge?
A. The pier was altered while I was there—cut up—something like 140 feet taken off from the West street bulkhead.
Q. My question is, whether you have any personal knowledge of any alterations before you went there?
A. No, sir.
Q. It may have been altered and may not, so far as you know?
A. Yes, sir.
By the COURT: Had you any knowledge of Piers 46 and 47 before a year ago last April?
A. Yes, sir; for the last five years I have had knowledge of the piers.
Q. I understand you to say that you gave the location of the usual berth of the Nevada?
A. I measured the Nevada where she lay since that time.
Q. Do you know anything about where she lay as long ago as 1871? I am asking as to your knowledge?
A. All I know is I measured her where she lay.
Q. That is within the last year and a half, is it not?
A. Yes, sir.
159 Q. I ask if you have any knowledge as to where she lay in 1871?
A. No, sir.

WILLIAM THOMPSON, a witness called by claimant, being duly sworn, testified as follows:

Examined by Mr. HOLT:

Q. What is your business?

A. Draughtsman.

Q. (Showing witness chart.) Did you draw this chart?

A. Yes, sir; I drew that.

Q. Where did you get the distances upon this diagram?

A. Young Mr. Dewar brought a sketch down to the office which had these measurements on it.

Q. Are the measurements upon this diagram in correct proportion for these dimensions that were given you by Mr. Dewar?

A. Yes, sir; they are exactly as he gave them to me, and drawn from a scale.

Q. All the distances are correctly represented according to that scale?

A. Yes, sir.

Cross-examined by Mr. BENEDICT:

Q. You drew it yourself, did you?

A. Yes, sir.

Q. Those measurements you put on there are the same ones that young Mr. Dewar brought you?

A. Yes, sir; exactly.

(Mr. Nash offers in evidence the diagram referred to.)

JACOB S. WARDEN, a witness called by claimant, having been duly sworn, testified as follows:

160 Examined by Mr. HOLT:

Q. What is your business?

A. Mechanical engineer.

Q. Have you ever seen the screw of the steamship Nevada?

A. Yes, sir.

Q. When?

A. About a year ago, I think.

Q. What did you do to it?

A. She came in with two of her blades carried away, and we assisted to put on two others.

Q. What sort of a screw was it upon the steamship Nevada that you fixed?

A. What we call a left-handed screw.

Q. What is a left-handed screw?

A. A left-handed screw propels to the left hand when you are looking at the stern of the ship. It turns to the left hand when you are looking at the stern of the ship.

By the COURT: It revolves towards your left hand?

A. Yes, sir.

By the COURT: That is, the upper part revolves towards your left hand?

A. Yes, sir.

By the COURT: The lower part does not?

A. No, sir.

By the COURT: Do you mean when the ship is going ahead or going astern?

A. Going ahead.

Q. (Showing witness chart.) Assuming the Nevada to lie as represented on this chart, what would be the tendency of the revolution of that screw upon the stern, lying on the north side of Pier 46, the vessel being headed westward towards the river?

A. It would have a tendency to drive the stern towards the dock.

Q. It would have a tendency to drive the stern towards the dock, and not the other way?

A. Yes, sir.

161 Cross-examined by Mr. BENEDICT:

Q. I understand you that the screw put in motion strikes the water from the top, and moves to the right as you face the stern?

A. No, sir; moves to the left.

Q. Is the screw all in the water?

A. It is all in the water.

Q. The upper part of it moves to the left and the lower part to the right?

A. Yes, sir.

Q. Why would that have any tendency to draw the stern towards the dock?

A. When that propeller is moving to the left it displaces the water to the left. If my wheel is working to the left, it has a tendency to displace that water until it gets to the bottom. It forms a kind of vacuum there, which draws the vessel up towards the dock, because the vessel would have a tendency to fall in, and when coming up on the other side, it would have a tendency to raise the water which would turn up against the side of the ship. You understand me?

Q. I do not know as I do exactly.

By the COURT: Why don't they balance each other, and send the ship straight ahead?

A. They will if she is under headway.

Q. That is when the upper half is moving and the lower half is not?

A. No, sir; they all move together. The upper part turns to the left hand when you are on shore, looking ahead at the stern of the ship; looking ahead at the stern of the ship, it turns to the left hand, and that we call a left-handed propellor.

By Mr. BENEDICT: That is to say, that as the Nevada lay in the position described on that diagram, the top of the propellor would turn towards 46?

A. Yes, sir.

Q. And the bottom would turn away from 46?

162 A. Yes, sir.

By the COURT: Would that send the ship ahead?

A. Certainly.

Q. That motion of the upper half of that propeller towards the pier, I understand you to say, would make a suction of water towards the pier, is that it?

A. No, sir; it would have a tendency to make a suction from the pier; when they want to go ahead, when they want to drive that ship out of the dock, that wheel turns that way (illustrating with model); as that blade comes down it displaces that water—drives it away from the pier out towards the slip, the tendency is for the vessel to go into that displacement.

Q. Would not the tendency be for the water to rush in to fill up the vacuum?

A. It would after a little while.

Q. Would it not at once?

A. No, sir.

Q. You think there would not be any tendency for the water to rush in to fill the place of the water that was displaced?

A. Yes, sir.

Q. The moment the water was put in motion out towards the slip, there must have been other water to rush in to fill its place?

A. Yes, sir; the water would rush in too.

Q. The water would rush in in the same direction as the water went that was put in motion by the wheel?

A. Yes, sir.

Q. If the water rushed in in that direction what would prevent its carrying the ship with it in the same direction?

A. Because there is not weight enough of water there to do it.

Q. Can you give us any idea of the length of time or length of distance that this effect would be produced that you have spoken of?

A. No, sir.

163 By the COURT: As the screw continued to revolve and the vessel to go ahead, would not this effect that you spoke of entirely disappear, and the vessel go straight out?

A. After a time.

By the COURT: After one revolution?

A. No, sir; I think not.

By the COURT: After two or three?

A. It might.

By the COURT: It does not amount to anything, does it? The ship has a tendency to go straight out to all practical purposes?

A. Yes, sir.

Redirect by Mr. NASH:

Q. Without any steerage the right-handed screw would, in its operation, carry the stern of the vessel in one direction, and the left-handed screw in another, is that so?

A. Yes, sir.

Q. Both these tendencies, when the ship gets in motion, are counteracted by the helm?

A. Yes, sir.

Q. And the helm cannot operate until the vessel gets under headway?

A. No, sir.

Recross by Mr. BENEDICT:

Q. Do you mean to say that the vessel, in going ahead, would go around in a circle?

A. If there was no helm there.

Q. Are you speaking from experience?

A. It is according to common sense.

Q. I am asking you whether you speak from experience?

A. I never went to sea in a ship without a rudder.

Redirect:

Q. How much experience have you had in this business of manufacturing propellers?

164 A. For the last 20 years.

Q. What has been your business in that time?

A. Making propellers and steam-engines.

Q. And screws of both kinds—right-handed and left-handed?

A. Yes, sir.

Recross by Mr. BENEDICT:

Q. Do you speak from any experience of the effect of this motion of a propeller, or merely from your judgment and common sense?

A. Well, I know that if you apply a force in water——

Q. I want to know whether you testify from experience?

A. No; I have never tried the experiment.

JOHN ALEXANDER, a witness called by claimant, being duly sworn, testified as follows:

Examined by Mr. HOLT:

Q. What is your business?

A. Chief engineer on the Montana.

Q. That is a steamship of the Williams & Guion line, is it not?

A. Yes, sir.

Q. How many years have you been an engineer?

A. About 25, at least.

Q. You know the difference between a left-handed and a right-handed screw?

A. Yes, sir.

Q. Do you know the difference in the effect of motion of a left-handed and right-handed screw?

A. Yes, sir.

Q. Supposing the Nevada to lie in this position (showing wit-
165 ness chart), what would be the effect of the motion of a left-handed screw as she started from the pier?

A. To bring her stern in.

Q. Do you know what kind of a screw the Nevada had?

A. I think she had a left-handed one.

Cross-examined by Mr. BENEDICT:

Q. Did you serve on the Nevada?

A. No, sir.

Q. Have you any recollection about her screw?

A. Not particularly.

Q. What do you mean by left-handed screw?

A. One that turns to the left.

Q. It turns to the right too, does it not?

A. No, sir; it may in this country; it does not in England.

Q. Both sides of the screw do not turn the same way, do they?

A. No; not likely.

Q. Which do you mean by a left-handed screw?

A. One that turns this way—to the left.

Q. When the vessel is going ahead?

A. Yes, sir.

Q. The top of the screw turns to the port side of the ship?

A. To the port side of the ship.

Q. Do you say that the motion of the screw towards the port side of the ship will turn the stern to the port?

A. Yes, sir; turn the stern to port. Things on the starboard side it would throw off away from the ship.

Q. And the right-handed screw would tend to draw things on the starboard side, towards the vessel?

A. Towards the vessel.

Redirect:

166 Q. This tendency of the different kinds of screws is irrespective of the suction caused by the motion of the vessel; it is a different thing?

A. It is a different thing.

Q. When a vessel is in motion, do right-handed screws and a left-handed screw have opposite tendencies, unless regulated by the helm; do they have opposite tendencies in reference to the stern of the vessel?

A. Not for the working of the ship, but for drawing anything in. A right-handed screw, if there is anything on the starboard side, draws it in, and the left-handed one has just the opposite tendency.

THURSDAY, *October* 18*th*, 1877.

JOSEPH JENNINGS, a witness called by the claimant, having been duly sworn, testified as follows:

Examined by Mr. NASH:

Q. Do you remember the circumstance of the sinking of the canal-boat Kate Green, in September, 1871?

A. Yes, sir.

Q. In the slip between piers 46 and 47.

A. I do, sir.

Q. Where were you at work that day?

A. On board of the steamship Queen.

Q. The Queen was taking in grain from an elevator?

A. Yes, sir; grain from an elevator and miscellaneous cargo from the dock.

Q. The Queen lay on the opposite side of the slip from the Nevada?

A. Yes, sir.

Q. Do you remember the name of the elevator?

167 A. There were two elevators alongside of the Queen; one was the Scotia, the other the Metropolitan.

Q. Do you remember when the canal-boat which was sunk came into the slip?

A. I could not place the exact hour.

Q. I do not mean the hour, but you remember the fact of her coming in?

A. Yes, sir.

Q. Did you give any hail to anybody on the canal-boat as she came in, or about that time?

A. Yes, sir.

Q. What was it?

A. I hailed the canal-boat and remonstrated.

(Objected to.)

Q. State what you said, as near as you can recollect.

A. I stated it would be to his advantage to get up to the head of the slip out of the way of the steamer, the slip being in such a crowded condition; that was part of the object in hailing him in the first place.

Q. Can you remember the language that you used any nearer than you have given it?

A. The language used, to the best of my knowledge, was that the steamship was about to sail and that she would create a suction in going out. I hallooed to him to get up to the head of the slip. I hallooed to him that she was in the habit of drawing the other vessels over from the other side of the slip, and it was necessary for him to get out of the way, and make fast either to the bulkhead or to the ship—to get back as far as he could.

Q. Where was you standing at that time?

A. I was standing on the rail forward of the mizzen rigging of the Queen.

Q. Were you employed on the Queen that day?

A. Yes, sir.

Q. Was there any response to this hail of yours, any answer? I do not ask what it was, but whether any reply was made?

168 A. There was a reply, but I could not tell the exact words that were made use of.

Q. Where did the reply come from?

A. From the canal-boat.

Q. From the canal-boat that came in with the tug?

A. Yes, sir.

By the COURT: You do not remember what the reply was?

A. No, sir; I could not place the exact words.

Q. I do not ask for the exact words; can you give the substance of the reply?

A. The substance of the reply, as far as I can recollect, was, that those that had charge of the boat were able to attend to their own business without any interference of mine. I might mind my own business.

Q. At this time had the canal-boat made fast to the outer canal-boat, or was she in the act of doing so; what was the condition of things at that time?

A. At the time I hailed her she was coming up in the slip. The tugboat had let go of her, and that was my reason for hailing her in the first place. I intended the tugboat should leave her at the head of the slip before he let go. That was the reason my attention was called in the first place.

Q. The canal-boat was between you and the tug?

A. No, sir; the tug had left the slip; had backed out.

Q. Did you notice what the men on the canal-boat were doing in reference to lines?

A. They were hauling and getting lines ready. I did not take particular notice what lines they had out. They had not made fast at the time I hailed them.

Q. Did they lie, at the time you hailed them, outside one of the canal-boats already there?

A. Yes, sir.

Q. What business were you engaged in at that time; what were you about?

169 A. I was superintending the loading of the ship.

Q. Of the Queen?

A. Yes, sir; what is commonly known as foreman of the stevedore.

Q. After you got the reply from the canal-boat what did you do?

A. I came down off the rail and went to the forward hatch of the Queen, where we were then in the act of taking in provisions.

Q. You went on about your duties?

A. Yes, sir.

Q. How soon afterwards did you know of anything having occurred to the canal-boat?

A. To the best of my knowledge, it was not over 12 minutes; I could not positively say that it was under 12 minutes, but it was not over 12 minutes.

Q. A short time afterwards?

A. Yes, sir.

Q. What happened then?

A. One of the men that was under my supervision—that was working on the ship—came running to me while I was looking down into the hatch, and stated to me that the canal-boat had been struck with the steamer's fan, and that she was sinking then.

Q. You heard that from some one else?

A. Yes, sir.

Q. Did you go back and look then?

A. I looked over the rail then.

Q. What did you see about the condition of things?

A. The condition of things was so flurried I could not see what they did. I knew, from the appearance of things, that they were making fast—getting her up the slip as fast as they could, because it was shoal water there.

Q. When your attention was called at this time, how far out had the Nevada got?

A. The Nevada had got clear of the end of the dock; just off the end of the dock.

170 Q. The actual coming together of the canal-boat and the Nevada you did not see?

A. I did not, sir.

Q. And you saw nothing which was going on on the canal-boat after you gave this hail and went about your own business until the time that your attention was called to it as you have stated?

A. No, sir.

Q. As you saw the ship going out, how did she go in reference to going out into the river—the Nevada?

A. Her stern was just clearing the end of the dock when this man called my attention to the fact that the boat was struck.

Q. Do you remember, when this last boat came in and made fast, how many canal-boats there were between her and the elevator?

A. There were two, to the best of my knowledge.

Q. The elevator that they were made fast to has been spoken of as the Metropolitan. It was the Metropolitan that was nearest the bulk head?

A. Yes, sir; the Metropolitan was nearest the bulkhead. The Scotia was forward; the Scotia was nearer to the bow of the ship.

Q. Outside of the elevator, I understand you to say, that, after this last boat came in, about three o'clock, about the time the Nevada went out, there were three boats?

A. The boat that was struck made the third boat. There were three tiers of boats then; that made the third tier.

By the COURT: At which elevator?

A. At the Metropolitan—opposite the Metropolitan.

Q. Was the Queen lying on that day at her regular berth?

A. Yes, sir; they made it her regular berth; sometimes they lay on the north side, sometimes on the south side.

Q. I mean at her regular berth on that side?

A. Yes, sir.

171 Cross-examined by Mr. BENEDICT:

Q. Where do you live?

A. 48 King street.

Q. How old are you?

A. I believe I am 40 years of age—last March, I think.

Q. Don't you know?

A. Well, to the best of my knowledge; that is what I am down for, forty years.

Q. What is your business?

A. My present business is foreman for a stevedore.

Q. Foreman for what stevedore?

A. Mr. William Shaw.

Q. Was Mr. William Shaw the stevedore that discharged for this line?

A. No, sir.

Q. Whose employment was you in in 1871?

A. At that time I was employed by the Walch Brothers.

Q. Were they the stevedores that discharged for the National line?

A. Yes, sir.

Q. Who discharges and loads for them now?

A. They do, sir.

Q. Have you ever worked for the Williams & Guion line?

A. Never in my life.

Q. Never worked for them at all?

A. No, sir.

Q. Do you know who the stevedore is that discharges their vessels?

A. I do not think that they have any; I understand that the company do their own work and employ a foreman.

Q. Do you know who the foreman is?

A. I know him by sight; I am not acquainted with him.

Q. Do you know his name?

A. Yes, sir.

172 Q. What is his name?

A. Well, the foreman that was there at that time was Thomas Love.

Q. I ask who is foreman now?

A. You are asking me more than I can inform you; I do not know, really, the man's name now; that is, I could not call him by name; I know him by sight.

Q. Thomas Love was the foreman at that time?

A. Yes, sir.

Q. Where does Love live?

A. I think some part of the 9th ward.

Q. Have you seen him lately?

A. I have not seen him in six months to speak to him.

Q. How long have you known Mr. Dewar?

A. I have known Mr. Dewar, that is, from seeing him, possibly twenty years.

Q. Did you ever talk with him about this matter?

A. I have talked with him, when I was subpœnaed, outside in the hall.

Q. When was that?

A. The last day that this case was supposed to come off.

Q. When was it?

A. Last Friday, I think.

Q. Have you ever talked with him before that?

A. Yes, sir.

Q. When did you talk with him before that?

A. He had requested to know who was on the dock at the time; he was told that I was foreman there, and he sent a messenger up to know if I knew anything of this matter.

Q. When was that?

A. That was, possibly it may have been, six months ago.
Q. You went to see Mr. Dewar then, did you?
A. At the request of the messenger.
Q. You went to see him?
A. Yes, sir.
173 Q. That was the first time that you talked with him about the matter?
A. Yes, sir.
Q. Had you ever talked with anybody else before that?
A. No, sir.
Q. Your attention had not been called to the matter by any conversation from the time it occurred, until about six months ago?
A. Not at all.
Q. Did you keep any memorandum or memorandum-book by which you could tell the date?
A. No, sir.
Q. You were in the employ at that time of Walch Brothers?
A. Yes, sir.
Q. How long were you in their employ?
A. Altogether possibly six or seven years.
Q. Beginning when?
A. Beginning in 1867, but I worked for them years before that; that is, for a short time; then I went to sea, and was away three or four years in California, and several places; when I came home, they secured my services again.
Q. When was that?
A. In 1866 or 1867.
Q. When did you leave their employ?
A. I left their employ four years ago last Christmas week—the week preceding Christmas.
Q. Were you in their employ all the time from 1867 till then?
A. Yes, sir; that is with the exception possibly of a week or two weeks, not more than that.
Q. Did you ever discharge or load the Queen?
A. Yes, sir.
Q. At any other time than this?
A. Yes, sir.
Q. A good many times?
A. Yes, sir.
Q. Do you recollect any other time when you were at work on the Queen besides this?
174 A. Yes, sir.
Q. What time do you recollect besides this?
A. I recollect an occurrence that happened on the Queen, before this and after this, where some men got hurt, and I was called upon to give my evidence in regard to the matter.
Q. Did you ever see any other canal-boat injured in the slip?
A. No, not in that slip.
Q. Did you in any slip?
A. Oh, yes; I have seen canal-boats injured several times.
Q. Did you ever see any canal-boat get injured by a vessel going out?
A. I cannot say positively whether I did, sir; supposing that they broke adrift by vessels going out, I cannot say that they ever received any injury further than the breaking of a line.
Q. What were your duties as foreman of stevedore?

A. My duty consisted in putting the men to work and seeing that they did their work properly, and seeing that they were knocked off at the proper time when there was no more work for them, and seeing that they stowed the cargo in the way it ought to *to* be stowed in the ship, and discharged it as it ought to be discharged.

Q. Where were you standing when you say you saw this boat come in?

A. I was standing in the wake of the mizzen-hatch, in what is known as the mizzen-hatch, on the deck.

Q. Which way was the Queen lying, head in or head out?

A. Head out.

Q. Which elevator was nearest the bulkhead?

A. The Scotia, I understand was nearest the bulkhead.

Q. How do you understand that?

A. That is my impression.

175 Q. You say that you now understand that the Scotia was nearest the bulkhead?

A. Yes, sir.

Q. Have you any recollection as to whereabouts these elevators lay, with reference to the Queen?

A. With reference to the Queen, the elevator known as the Scotia was between the mizzen and after hatch.

Q. Abreast of the mizzen-hatch?

A. Yes, sir; possibly between both hatches; and the Metropolitan, as far as I can recollect, was between the No. 2 and No. 3 hatch.

Q. How many hatches are there?

A. At that time were five hatches on the Queen.

Q. How do they number?

A. 1, 2, 3, 4, and 5, beginning forward and going aft.

Q. And the mizzen-hatch would be 5, would it?

A. No, sir; when a ship has more than three hatches, the third hatch is known as the mizzen, when she has more than three hatches we generally go by numbers.

Q. Whereabouts on the Queen would that bring you?

A. Between the main and mizzen rigging; that is, right forward of the mizzen rigging.

Q. What were you doing there?

A. Looking down the hatch to see what the men were doing in getting in grain, &c.

Q. Were you taking in cargo at the mizzen-hatch?

A. I was getting in grain, to the best of my recollection.

Q. Were you taking in cargo at any other hatch?

A. At No. 1; the forward hatch.

Q. You remember the names of the elevators that were there. Do you remember the names of any other vessels that were in the slip?

176 A. No, sir; I never interested myself about any other vessels that were not connected with the steamship company.

Q. Do you remember the names of any other vessels that were connected with the steamship company?

A. There were none there except canal-boats, and those I did not interest myself about.

Q. You did not interest yourself about the canal-boats?

A. No; except when we got grain out of them.

Q. You did not interest yourself about the names of them?

A. No, sir; I did not interest myself about the names of them.

Q. Where did these elevators lie, with reference to where you were standing?

A. Both of them were forward of me.

Q. Abreast of what hatch was that?

A. That was between the aft and the mizzen-hatch; between Nos. 4 and 5.

Q. Is the mizzen-hatch 5?

A. You may call it 5, if you wish.

Q. You call it 5?

A. Yes, sir; I call the aftermost hatch No. 5, occasionally.

By the COURT: What is the after-hatch?

A. The after-hatch is No. 4.

By the COURT: Is the mizzen-hatch behind the after-hatch?

A. Yes, sir; some of these steamships have 4 or 5 or 6 hatches sometimes; we generally call the aftermost hatch the mizzen-hatch.

By the COURT: The mizzen-hatch is No. 5 on the Queen. Is that it?

A. Yes, sir.

Q. You call the after-hatch No. 4?

A. No. 4.

Q. The mizzen-hatch was furthest aft of any hatch on the Queen, was it?

A. Yes, sir.

Q. And you were aft of that?

177 A. I was abreast of it.

Q. You said you were in the wake of it; does that mean aft?

A. No, sir; that means abreast of it; you can construe it that way; when I call any one to go in the wake of the mizzen-hatch, he goes abreast of it; in the wake of a ship is a very different thing.

Q. You understand that in the wake of the mizzen-hatch is abreast of it?

A. Yes, sir.

Q. These elevators were, both of them, forward of you?

A. Yes, sir.

Q. Did you help to make any of the other canal-boats fast to either of the elevators?

A. No, sir.

Q. That did not come in your business, did it?

A. No, sir; it was no part of my business.

Q. Do you know the name of the tug?

A. I do not, sir.

Q. Did you know anybody on the tug?

A. No, sir.

Q. Nor anybody on board of the canal-boat?

A. No, sir.

Q. Do you know what other steamer lay on the other side of the slip?

A. The steamer Nevada lay on the other side of the slip.

Q. Do you know whether there were any vessels lying on the other side of your dock?

A. There were some lighters there, but I do not know their names. I did not interest myself about them; we generally have lighters on one side of the dock, coming and going all the time—barges and lighters.

Q. Do you remember how many people there were on board of this canal-boat?

A. No, sir; I do not.

Q. Did you see the canal-boat at the time she was brought in there, so that you can tell which side of the tug she was?

178 A. Yes, sir.

Q. You saw them when they were coming in?

A. Yes, sir.

Q. Which side of the tug was the canal-boat?

A. The tug was to the southerly side of the canal-boat, and he let go of the canal-boat immediately after rounding the corner of the dock; that was the reason I spoke.

Q. And he went on about his business?

A. Yes, sir.

Q. And the canal-boat ran up in towards the slip; towards the elevator?

A. They were hauling up at the time I hailed them.

Q. How far did he run from the time the tug let go of him until he got up where he could get a line on to the elevator?

A. He had not got up when I hailed him.

Q. How far did the canal-boat run after the tug let go of him?

A. Possibly 50 or 75 feet.

Q. Then, when you spoke to him, he had not got a line out; is that it?

A. He may have got one line out, and was hauling with that line.

Q. He may and may not; have you any recollection about that?

A. I would not be positive that he had a line out at the time I hailed him, but he may have had one.

Q. You have no recollection of it?

A. No, sir.

Q. Do you recollect seeing him get a line out, after you hailed him?

A. No, sir.

Q. You hailed him, and then went forward?

A. I hailed him, and when I saw that he did not do as I asked him to do, I went forward; he made some offensive remark to me; I lost all interest in the matter, and went forward.

Q. Subsequent proceedings interested you no more?

179 A. No more, sir.

By the COURT: How did you see that he was not doing as you wanted; what was he doing that was not as you wanted him to do?

A. He did not do anything that I asked.

By the COURT: What did he do that you did not want him to do?

A. I do not know what he may have done; I asked him to get as far up in the slip as he could, and the answer I got was that he understood his business without any interference of mine.

By the COURT: For all you know, he did go up as far in the slip as he could?

A. For all I know, he may have got up as far as he could.

Q. I wish you would give us again, as closely as you can, the language that you used to the canal-boat.

A. As near as I can remember what I said was, "Cap., get as far up into the slip as you possibly can; the other ship has been working her fans some time, and will be going out shortly."

Q. Then you didn't say anything about her being in the habit of drawing vessels off?

A. Not at that time; I do not think he heard that remark.

Q. You do not think he heard that remark?

A. No, sir.

By the COURT: You did say so?

A. Yes, sir; so that the people in the immediate vicinity could hear.

By the COURT: What was it that you said about that?

A. The ships, when they work their fans, draw the other ship from the dock and all that is connected with it; that is, all the lighters that may be made fast to it.

By the COURT: You said that you do not know whether he heard it?

A. I could not tell whether he heard it or not.

180 By the COURT: Did you say that after he replied to you, and told you to mind your own business?

A. I think it was after.

Q. Why do you think he did not hear that?

A. I did not halloo to him so loud as I did in the first place.

Q. Why not; was it not as important that he should know that as the other thing that you had said?

A. I imagined that he did not take any interest in what I said in the first place, and I did not care whether he heard me or not afterwards.

Q. What did you say it for at all?

A. Simply because I am in the habit of saying it to others; I have been in the habit of saying it on former occasions to others in similar circumstances.

Q. You did not say it to anybody?

A. I said it to anybody: "The ship will be hauling him from the dock, she has hauled us over before." And so she had; I had given orders to make more secure.

By the COURT: You say that she had already drawn the Queen away from the dock by moving her fans?

A. Partly, yes, sir; that is, drawn us out a little ways from the dock.

By the COURT: So that you had to make the fastenings more secure?

A. Yes, sir.

Q. Had you drawn over any of the canal-boats that were in the slip?

A. She had drawn vessels over.

Q. I ask you whether she had drawn over any of the canal-boats, before this collision?

A. Before this she had drawn the ship and all that was attached to it; she could not draw the canal-boats.

By the COURT: You mean that she drew over the ship and the canal-boats and the elevators before this canal-boat came in collision?

A. Yes, sir.

181 Q. Had she drawn the canal-boats away from the elevators?

A. No, sir; the whole body of boats went over; if there was any slack line it was bound to straighten out with the suction.

Q. Was there anybody standing there with you in the wake of the mizzen-hatch?

A. There were several workmen there in that vicinity.

Q. What were they doing?

A. They were discharging from the after-hatch.

By the COURT: You were taking out cargo and taking it in at the same time?

A. Yes, sir.

Q. They were at the after-hatch and not at the mizzen-hatch?

A. Yes, sir; they could hear every word.

Q. They were at the after-hatch and not at the mizzen-hatch. Now I ask you if there was anybody with you in the wake of the mizzen-hatch?

A. Nobody with me; no, sir; I was standing on the rail when I

spoke—on the ship's rail, and had hold of what is known as the forward-shroud.

Q. Do you know the names of any of the workmen that were at the after-hatch?

A. I did.

Q. Do you?

A. Yes, sir.

Q. Give us the names.

A. A man named Hughes; this was the man that called my attention to the accident afterwards.

Q. Anybody else?

A. I do not remember anybody else; there were always strange men working on the ship.

Q. That is the only man you can remember?

A. That is the only one I can call to mind.

Q. Do you know where Mr. Hughes is—what has become of him?

A. I do not, sir.

Q. You have not seen him lately?

182 A. I have not seen him to speak to him possibly in a year.

Q. Did you ever talk to him about this matter since it happened?

A. No, sir.

Q. You went over, you say, to the forward-hatch?

A. Yes, sir.

Q. What were you doing at the forward-hatch?

A. Looking in the hatch to see what progress they were making.

Q. What were they doing there?

A. Taking in, to the best of my knowledge, provisions, bacon, beef, &c.

Q. Were they not taking in grain?

A. Not forward; no, sir.

Q. Were they at work on these elevators taking in grain?

A. They had been.

Q. Were they then?

A. I would not positively say that they were.

Q. Can you say that they were not there?

A. I could not say that they were at this very time.

Q. Could you say that they were not?

A. I did not say that they were not.

Q. Can you say so?

A. I could not say; sometimes they shift; I cannot positively say whether they were working at that time.

Q. You say that you do not think it was over twelve minutes before Hughes came forward?

A. Yes, sir.

Q. What makes you fix upon twelve minutes?

A. I say it was not over that time.

Q. Why do you say not over twelve rather that saying not over ten?

A. I want to make the largest margin; when you put the question I wanted to put it to the fullest extent; I went forward and had been looking down the hatch a few minutes, and I say it was not over twelve minutes.

183 Q. You had been looking down the hatch?

A. Yes, sir.

Q. You did not notice the Nevada going out?

A. No, sir; I did not notice her going out.

Q. You did not hear any whistle from the Nevada?

A. I did not take any notice of the whistle; there may have been half a dozen whistles.

Q. You did not pay any attention?

A. No, sir.

Q. Could you see her as you stood in the forward-hatch?

A. If I straightened up and looked over the rail I could see her.

Q. As you looked down you did not see her?

A. No, sir.

Q. Did you go aft when Hughes came and called you?

A. I did not go immediately aft; I did a short time afterwards; I had occasion to go aft and I saw a large crowd of people on several canal-boats running backwards and forwards.

Q. How many minutes after Hughes came before you went aft?

A. Possibly five or ten minutes.

Q. What were you doing during that five or ten minutes?

A. Looking after the general business.

Q. Not looking around outside of the ship?

A. No, sir; not outside of the ship; my business was to see that the business was done on board of the ship; of course I had four or five hatches to look after.

By the COURT: When Hughes came and told you this you did not go to the side and look over?

A. Not immediately.

By the COURT: You did not look over at all until you went aft?

A. I did not look over the side until I went aft; that was five minutes after I went aft.

Q. Were you aft when the Nevada's stern was clearing the end of the dock?

184 A. No, sir.

Q. Where were you then?

A. Forward.

Q. When was that?

A. Just previous to this man's coming forward.

Q. What called your attention to the Nevada?

A. I straightened up; I could see over the hatch and see the ship's masts.

Q. And see the ship's masts?

A. Yes, sir; as she swung clear of the dock.

Q. You could not see the stern of the ship so as to see how her helm was?

without going over to the side.

Q. You did not?

A. No, sir.

Q. How long had you been working there that day; all day?

A. Yes, sir; I had been working there all day.

Q. Do you know what day of the week it was?

A. To the best of my opinion it was Wednesday.

Q. Have you any recollection what kind of weather it was?

A. It was murky weather, similar to to-day.

Q. Do you know when any of the other canal-boats came into the slip?

A. I think, to the best of my knowledge, one of them came in in the morning.

Q. Have you any recollection about it?

A. I could not positively state; I think so.
Q. Have you any recollection at all?
A. My recollection is that one of them came in in the morning.
Q. Have you any recollection about the other?
A. No, sir.
Q. Have you any recollection about the elevators?
A. The Metropolitan, I think, came in in the morning.
Q. How about the other?
A. My impression is that the other had been lying there the night previous.

185 Q. Which hatch did the Metropolitan lie abreast of?
A. The No. 3, I believe, as near as I can recollect.
Q. And the Scotia lay abreast of which hatch?
A. Between the aft and mizzen.
By the COURT: Had those other canal-boats all been discharged of their grain?
A. No, sir; not all.
By the COURT: Had any of them been unloaded entirely?
A. I do not think any of the two that had been outside had been.
Q. Were there any canal-boats lying at the forward elevator?
A. I could not be positive that there was any.
Q. Are you positive that there was any lying at the stern of the elevator?
A. As I recollect it now, there was a lighter. I think there was a lighter and two canal-boats made fast to the forward part of the elevator.
Q. Were they astern of the elevator?
A. No, sir; ahead of the elevator. My impression is that there was a lighter forward of the elevator, made fast to the ship.
Q. Forward of which elevator?
A. Forward of the elevator that was in wake of No. 3 hatch—that is the Metropolitan.
Q. About the other canal-boats, where do you think they were?
A. They were outside of the elevator, or right abreast of both elevators.
Q. Do you mean one abreast of one elevator and one abreast of the other?
A. No, sir; there was more than two canal-boats in the slip.
Q. How many canal-boats were there in the slip?
A. I could not tell positively, but there were more than two.
Q. Were there more than three?
A. Yes, sir; I think there were more than three.
Q. Were there more than four?

186 A. I would not be sure, but I believe there were more than four.
Q. You think that there were more than four?
A. Yes, sir.
By the COURT: You mean more than four attached to the Queen, or at other places?
A. At other parts of the Queen.
Q. Can you tell where those canal-boats were placed, any of them; I ask of your recollection?
A. My recollection is, that they were outside of the elevators.
Q. Outside of the two elevators?
A. Yes, sir; my recollection is that there were two tiers of canal-boats outside of the elevators.

Q. That is, a canal-boat alongside of each elevator; is that it?
A. Yes, sir.
Q. And another canal-boat outside of that one?
A. Yes, sir; that is my recollection.
Q. Whereabouts, with reference to the stern elevator, was the canal-boat at the time when you say you hailed it—had she got up in the slip as far as the elevator was?
A. The whole of the canal-boat had not got that far.
Q. Her bow had?
A. Her bow had got abreast of the forward part of the elevator, I think.
Q. Where did the man stand that gave the reply to you?
A. On the canal-boat's deck—on the forward part of the canal-boat's deck.
Q. Have you ever seen him since?
A. Never since or before.
Q. Do you think you would know him if you did see him?
A. I would not know him if I saw him now.
Q. How far was he from you?
A. He may have been 200 feet or 150.
Q. What kind of a looking man was he?
187 A. That I did not pay any attention to, because we have to deal with so many that we do not make any note of their appearance.
Q. Did you know that that canal-boat was coming to the Queen?
A. I heard somebody say so on the elevator. I heard somebody halloo, "This is our other boat."
Q. Did you hear anybody on the elevator halloo to the canal boat?
A. I heard a man on the elevator say, "Here comes our other boat."
Q. Did you hear him halloo to the canal-boat?
A. I heard him halloo, "Here comes our other boat."
Q. You heard him halloo to the canal-boat?
A. Yes, sir.
Q. Do you remember what he said?
A. I do not, sir.

Redirect examination by Mr. NASH:

Q. Do you know Captain Greenwood, who was connected with one of these elevators?
A. I might know him but not by name.
Q. The engines of the Queen were amidships, were they not?
A. Supposed to be—a little abaft of amidships.
Q. How many hatches were there forward of the engines?
A. Three.
Q. And two aft?
A. Yes, sir; two abaft.
Q. Does that represent those three hatches—the location of them according to your recollection?
(Showing witness chart.)
A. Yes, sir.
Q. Where were you, with reference to the hatches?
A. I was in the wake of the mizzen-hatch, standing on the rail. I had hold of the forward shroud of the mizzen-rigging.
Q. How near were you to the stern of the elevator?
188 A. I may possibly have been 10 or 12 feet.
Q. How had you ascertained that day, before you hailed the canal-boat, that the Nevada was going out?

A. I had ascertained that from the fact that previous to this canal-boat's coming in, the after and mizzen-hatch skids, that were made fast to the ship and the other end resting on the dock, were drawn backwards and forwards. In some instances they are taken off the dock, and unless they are properly secured they go overboard. I then gave orders to have them properly secured.

Q. It was that suction upon your vessel that called your attention to the Nevada?

A. Yes, sir.

Q. You had noticed that she had been working her fans before?

A. Yes, sir.

Q. Did you hear any bells?

A. I heard bells and whistles, but gave them no attention, because they are all the time going on when there are vessels coming in.

Q. When you speak of the Nevada creating a suction in that way it is no' different from any other vessel of that size?

A. No difference.

Q. You had not been drawn with any great force from the dock by this suction of the screw?

A. No, sir.

Q. Only a short distance, so as to tighten the lines?

A. If a ship is made fast, if the lines are slack, there will be more or less drift of the lines; then, of course, she will go as far as her lines will let her.

Recross by Mr. BENEDICT:

Q. What did you tighten the lines for?

A. The lines of the skids so that they would not be drawn off.

Q. You did not tighten the lines of the vessel?

189 A. No, sir; of the skids. The skids are what we use to discharge a vessel, to keep the goods from going overboard or off from the dock.

JAMES GREENWOOD, a witness called by claimant, having been duly sworn, testified as follows:

Examined by Mr. NASH:

Q, Had you any connection with the elevator Metropolitan in September, 1871?

A. Yes, sir.

Q. What was your connection with it?

A. They call me millwright or captain of her.

Q. You had the management of the elevator?

A. Yes, sir; as far as the elevator is concerned.

Q. Do you remember the occurrence of the sinking of a canal-boat in a slip between piers 46 and 47 in September, 1871?

A. Yes, sir.

Q. Did you know of the occurrence at the time; did you see any part of it?

A. I did, sir.

Q. Where were you that afternoon?

Q. I was on the elevator, between the elevator and the canal-boat we were unloading.

Q. Your elevator was the Metropolitan?

A. Yes, sir.

Q. Where did she lay with reference to the Queen?

A. No. 4 hatch.

Q. What elevator was it that was lying nearest the bow?
A. The Scotia.
Q. What was your elevator doing there that day?
A. We were discharging grain.
Q. Into the Queen?
A. Yes, sir.
Q. From the canal-boats?
190 A. Yes, sir.
Q. Where did the canal-boats from which you were discharging lie?
A. Lay alongside.
Q. How many?
A. Two.
Q. Did the two canal-boats lie abreast of each other?
A. I would not say exactly that they were abreast, there may have been two or three feet difference.
Q. Nearly abreast?
A. Yes, sir,
By the COURT: Outside of the elevator?
A. Yes, sir.
Q. Did you notice another boat coming in with the tug?
A. Yes, sir.
Q. I wish you to look at that diagram and see if it represents the position of your elevator, and of the two canal-boats which were there before the third one came in?
A. Yes, sir; I think so.
Q. When the third canal-boat came in, where were you standing, as near as you can recollect?
A. When she came in, I was standing on the boat that we were unloading.
Q. That is the boat nearest to the elevator?
A. Yes, sir.
Q. Did you make any hail or say anything to the persons on this third canal-boat when it came towards these other boats?
A. I did when it got up towards us.
Q. State what you said, and what reply, if any, was made?
A. The captain coming in on that canal-boat gave me a line I passed on the boat that was outside of my boat; I left the boat that I was on, and went down on the canal-boat, and took his line; I took the line and told him he had better go up the slip pretty lively, or else
191 get lines out where he was to ship, because that ship had made her usual alarms, and she was shortly going to go out.
By the COURT: You told him that?
A. Yes, sir; and his reply was to me, "Who is doing this, you or me? Let her go." That is near as I can remember.
Q. Then he made fast, or what did he do?
A. He did not make fast.
Q. State what took place.
A. He gradually kept working along on this line; he was using it as a spring line, what sailors calls a spring line; they were walking along, continuing the distance right along, until he got aft.
Q. State the whole occurrence from that time on, as you remember it.
A. They kept going on with this line at what the sailors call a snail gait; if I recollect rightly, our superintendent—we have a superintendent on the elevator—had spoken to him previously to me coming in;

they kept moving on, and the Nevada had started, and by starting out and by this boat continuing on with this one line she gradually worked her bow off, because it drives her stern in against the other boat. As soon as the Nevada started it drew her off. If he had got out one stern line he would have saved his boat, if he had done as I told him; he rebuked me, so I did not have anything further to do with it.

By the COURT: Was there no line fast on this canal-boat?

A. Not that would hold the boat.

By the COURT: Was there any?

A. A spring-line was fast on the outside boat.

By the COURT: There was one line fast?

A. Yes, sir.

Q. To the outside boat?

A. Yes, sir,

By the COURT: And there was no line fast except that?

A. No.

Q. And that line was only fast at one end?

192 A. Only one end.

Q. And he was using it to pull along with?

A. Yes, sir; the end was in the hands of the men.

By the COURT: They were drawing their boat up by that means, was that it?

A. Yes, sir.

Q. You say you had heard these alarms from the Nevada, what were they?

A. Bells and also whistles.

Q. You also heard whistles?

A. Yes, sir.

Q. Is Hedgerman the man you spoke of as being your superintendent?

A. Yes, sir.

Q. Was there room enough at the stern of the Queen to have got up and made fast to the pier or bulkhead?

A. Yes, sir; clear of the ship at the stern of the Queen.

Q. Did Captain Dewar call upon you shortly after this?

A. Yes, sir,

Q. On behalf of Williams & Guion?

A. Yes, sir.

Q. So that the circumstance was fresh in your memory at the time?

A. Yes, sir; he came to me and made a statement which possiby I may not recollect as well now as then.

Q. The matter was called to your attention while it was fresh in your recollection?

A. Yes, sir.

Q. Was this boat that came in a boat that you were expecting, or did not you know anything about that?

A. No, sir.

Q. Your boat was there to unload any boats that came?

A. Yes, sir; it was proper for the captain of the boat to look after those.

193 Do you recollect how near unloaded this boat next your boat was?

A. Possibly a little over half unloaded.

Q. Had you begun on the next, or did you finish one first?

A. We finished one first; we had not begun on the second boat.

Q. Did you see the Nevada as she went out?

A. Yes, sir.
Q. How did she go—with reference to going out straight?
A. She went out just as straight as a vessel could go out.
Q. Did she hug the pier all the way along?
A. Yes, sir; as far as I could see.
Q. The leg of the elevator was in the boat?
A. It was in the boat; yes, sir.
Q. And you were actually at work at that time?
A. Yes, sir.
Q. Was that boat carried away from her fastenings by the going out of the Nevada?
A. No, sir.
Q. Was the next boat?
A. No, sir.
Q. Had you, before the Nevada started, in reference to these two boats, taken any precautions about making them fast?
A. That duty devolved upon me to see that these things were done.
Q. Had you done it?
A. Yes, sir.
Q. If the canal-boat that you were working at had gone loose, what effect would it have had upon the leg of your elevator?
A. It would have carried it with it.

Cross-examined by Mr. BENEDICT:

Q. Where do you live?
A. Brooklyn.
Q. Whereabouts?
194 A. 110 Bridge street at present.
Q. Are you attached to the Metropolitan still?
A. I am, sir.
Q. And have been ever since?
A. Yes, sir.
Q. How long were you connected with it before?
A. 10 or 12 years.
Q. Are you a part owner?
A. I am not, sir; not a dollar.
Q. How long had you been there at the Queen with the elevator?
A. I would not be positive of that; I think we came over the night before; Monday night; I would not be positive of that.
Q. Do you remember whether the other elevator was there when you got there?
A. I would not be positive, but I think she was not there; I think we were the first elevator at the ship.
Q. You have no recollection of when she came?
A. No, sir; I would not be positive of the time she came there.
Q. Do you recollect whether you got to work before she came?
A. That I would not be positive.
Q. Do you recollect whether any canal-boats came before she came?
A. Before the Scotia came?
Q. Before the other elevator came.
A. I would not be positive of that either.
Q. Do you recollect when the first canal-boat came?
A. No, sir.
Q. Do you recollect whether the first canal-boat came to you or came to the Scotia?
A. There was a canal-boat at this time lying at the Scotia.

Q. One canal-boat?
A. Yes, sir.
Q. Besides the two lying at yours?
A. Yes, sir.
195 Q. There were three canal-boats?
A. I am positive those three were there.
Q. Do you know the names of any of them?
A. No, sir.
Q. Do you keep any record of the names of the boats you discharge?
A. No, sir; that lies with the superintendent and weighmaster to keep the names; I only do the moving of them and shifting of them.
Q. At the time this canal-boat came in, your elevator was actually at work discharging?
A. Yes, sir.
Q. What hatch were you discharging at?
A. Number 4.
Q. Do you know what tug it was that brought the canal-boat in?
A. No, sir; not her name.
Q. Did you see the canal-boat when she was still fast to the tug?
A. I saw the tugboat and the canal-boat come along pointing toward the slip.
Q. Before they were separated?
A. Yes, sir.
Q. And where were you when you first saw them coming?
A. When I first saw them coming I was standing on the boat that we were unloading.
Q. Then you said you went out on the outside boat and took this line?
A. Yes, sir; as he came up the slip.
Q. Did you take the line from the forward part of the canal-boat that came in?
A. Yes, sir; the canal-boat that came in came head in, and I took the line from the man that threw it to me.
Q. Did you notice how many people there were on her deck?
A. To the best of my judgment, some two or three.
Q. Had you ever seen any of them before?
A. No, sir.
196 Q. This second boat that you went on, was she lying head in or head out?
A. I would not be positive of that; generally, coming in the slip, they come head in.
Q. Whereabouts did you say you were standing when you took the line?
A. I was standing on one end of her. I would not be positive whether the stern or bow.
Q. Can you tell whether the inshore or outshore end?
A. The outshore end.
Q. Do I understand you that you took that line and walked towards the bulkhead with it clear to the end of the canal-boat?
A. Yes, sir.
Q. What did you do then with the line?
A. I put it on the cleat for them to haul.
Q. And then you walked aft?
A. Yes, sir.
Q. Did you then go off from that boat?
A. No, sir.

Q. You stood on that boat?
A. Yes, sir.
Q. For some time?
A. Yes, sir.
Q. How far aft on that boat did you go; clear to the other end?
A. Well, back on the boat; yes, sir.
Q. Did you see anybody on the stern of the canal-boat that was coming in?
A. Yes, sir; the gentleman that stood on the bow; whether the captain or steersman I could not say; the one that threw me the line; there were others there.
Q. Did you see anybody on the stern of the canal-boat when you went aft?
A. No, sir; not as I know of; I did not see anybody.
Q. What did you do when you were standing on the stern of the boat there after you came aft?
A. I stood there.
197 Q. After you put the line on the forward cleat, what were you doing?
A. Standing looking at them pulling the line, I suppose.
Q. Is it a matter of supposition, or have you any recollection of it?
A. I can say they were taking in the slack of the line.
Q. The line that you had put on the cleat?
A. The spring line.
Q. The line that you put on the cleat, was it?
A. Yes, sir.
Q. How far away from the boat that you was on was the canal-boat that came in when you took the line?
A. To the best of my opinion, probably 15 or 20 feet.
Q. How far away was she from the side of that boat when you put the line on the cleat?
A. She had not gone much—about the same distance.
Q. Did you see when the Nevada started?
A. I saw her when she started.
Q. How far was the canal-boat from the side of the boat that you were on when the Nevada started?
A. She was within probably 15 or 20 feet, being level with the outside boat.
Q. (By the COURT.) How close was her side?
A. The boats were pretty close together, but they had not come up to the same length with each other; the after-end of the canal-boat was close up to the stern of the boat I was standing on, and the bow was off.
Q. When you put the line on the cleat forward the men that held the line stood on the forward part of the canal-boat, did they?
A. One of them.
Q. You say that he walked aft?
A. Yes, sir.
198 Q. How far aft did he walk before the Nevada started?
A. Pretty well along to the stern, when the Nevada started.
Q. And they were hauling on this line, were they?
A. Yes, sir.
Q. Which was fastened on the forward cleat; is that it?
A. Yes, sir; the boat I was standing on.
Q. Then the line, as I understand you to say, at the time when the

Nevada started, the line that was out was the full length of the canal-boat, almost the full length of the canal-boat; is that right?

A. Yes, sir.

Q. When you took the line, was the canal-boat that came in in motion?

A. Yes, sir; a little motion, at a very slow gait.

Q. She was going ahead?

A. Yes, sir; you could call it going ahead.

Q. When you put the line on the cleat, how much line was there out from the cleat to the man that held it?

A. I did not measure it; I could not tell how much was out.

Q. You can tell somewhere near, can't you?

A. No, sir; I could not tell; there may have been 10 or 15 fathoms; it was a tow-line, I remember that; possibly 15 or 20 fathoms.

Q. Then how many fathoms long do you call the canal-boat?

A. They call a canal boat 90 or 100 feet.

Q. State how many fathoms.

A. I am not a very good scholar; I could not put it into fathoms.

Q. Couldn't you tell how many fathoms that was?

A. No, sir; I could not.

Q. When you said there might be 10 or 15 fathoms of line, how many feet would you call it?

A. You are trying to get me on a thing I know nothing about.

199 Q. I want to get at the length of the line in some way that we can understand.

A. There may have been 15 or 20 fathoms.

Q. What makes you think it was 15 or 20 fathoms?

A. Because it is a sailor's practice to use his arms for fathoms.

Q. You think it was 10 or 15 arms' lengths?

A. I said it might be 20; it might be more.

Q. Did you run away with the line which they threw out?

A. They threw it out, and I went for it.

Q. How much did the canal-boat go forward while you were putting on the line?

A. Not more than a foot or two, because I was no time doing it.

Q. How soon after you got on the stern of the boat did the Nevada start?

A. To the best of my knowledge, some ten or fifteen minutes. It might be ten, and it might be more than ten; it might be fifteen.

By the COURT. That is, after you first went on the boat?

A. After I first spoke to the captain of the canal-boat coming in.

Q. You said that after you put the line on that forward cleat you went aft and stayed there?

A. Yes, sir.

Q. How long after you got aft that time did the Nevada start?

A. That was the time that I told him that the ship was going to start and he made me that answer; it may have been 10 or 15 minutes.

Q. Where were you standing when you told the captain?

A. I was standing abreast of him on the boat.

Q. Whereabouts on the boat?

A. It may have been forward of this cabin and may have been aft; I cannot tell as to that.

Q. It was after you left the cleat?

A. Yes, sir.

200 Q. There was no other line got out?

A. No, sir.

Q. Did you see what became of that line?

A. I think that line still remained there after the suction of the boat and her drawing off and getting struck; the reaction of the water sent her right back again.

Q. What became of the line?

A. I could not say what they did with the line; they must have taken it in with them.

Q. Did you see whether anything happened to that line, in consequence of the boat being drawn over?

A. I did not see it break.

Q. Did you see anything done to it? Were the men still holding on to it?

A. I could not be positive; I think the men had it in their hands when she was drawn off.

Q. When she was struck?

A. I could not be positive of that.

Q. Didn't you see what they did with it?

A. I did not see what they did with it; there was such confusion.

Q. You cannot say what they did with it?

A. No, sir.

Q. You will not be sure whether they held on to that line or not?

A. I will not be positive.

Q. Was there anybody on that canal-boat except you?

A. I would not be positive that there were any on deck.

Q. Was there anybody on the elevator?

A. I would not not be positive that there were any on deck; there were men in the canal-boat trimming grain, and the superintendent was in the ship or upon the elevator.

Q. Do you know where he was at this time?

A. I know previous to this.

Q. At this time?

201 A. I do not know; he may have been on the same boat.

Q. Did you have an engineer on the elevator?

A. Yes, sir.

Q. What was his name?

A. I would not be positive who he was at that time; we had shifted our engineers; as near as I can come to it, his name was either Fowler or Lighthall, I think.

Q. Did you ever talk with that engineer on board at that time about this matter?

A. I would not be positive.

Q. Haven't you talked with the engineer, and told him that you thought the owner of the canal-boat ought to be paid for the injury to the boat?

A. Not to my recollection; I never made use of any such assertion.

Q. You swear you never did?

A. I swear I never did.

Q. Is either of these men the engineer of your boat now?

A. No, sir.

Q. Do you remember the names of any of the canal-boats?

A. No, sir; I could not.

Q. Would you know the names of any of them if you heard them?

A. No, sir.

Q. Did you see what was done after the canal-boat received the injury—what was done with her?

A. Yes, sir.

Q. What did they do?

A. They got—I would not be positive whether horses or mules—they got them up and put them in the bow-stable of the outside boat; the suction brought her back, and they made fast alongside; they got the mules out and some of the cabin furniture—a sewing-machine; they knew she was sinking, because they could hear the rush of water through the boat; their effort was to work the boat up in the
202 slip, where it was shoal water. They got her up in that corner before the steamer that generally is running around the river to pump out boats got there.

Q. Which end of the canal-boat did you say was drawn over towards the Nevada?

A. The seafaring phrase would be that she was drawn over bodily; their working aft with the line would naturally keep the stern of their boat up tighter to the one that was inside of them; as soon as she started she naturally went over bodily, but, if anything, the bow went over a little first.

Q. Did you see which end of her was struck?

A. I saw the tremor that ran through the boat; I saw that it was struck somewhere under the boat, either forward or at the cabin.

Q. At the time she was struck you say she was lying parallel with the Queen?

A. No, sir; I did not say that; her bow was a little bit off.

Q. What was the difference between her bow and her stern in feet or fathoms?

It may be probably a fathom; her bow a little more off.

Q. Did the Scotia lie farther out in the river than your elevator, or nearer the bulkhead?

A. Further out.

Q. Whatever fastening there was, as I understand you, was from the stern of the canal-boat that was hurt; the man that held the line was on the stern?

A. I would not say on the stern; she was a quarter-deck boat, very narrow; I would not be positive whether they were right behind the cabin; I think between the cabin and the stern, walking aft.

Q. Do you remember whether there was more than one man there holding the line?

A. To the best of my opinion there were two or three, but I would not swear.

Q. Was there a weighmaster there at the time?

A. Yes, sir.

Q. What is his name?

A. I do not recollect.

203 Q. Did you ever have any talk with the man who was weigh master there at that time about this matter?

A. No, sir.

Q. Did you ever tell him that you considered that the owners of the canal-boat ought to be paid for the injury?

A. Never, sir.

Q. Who was your engineer in January, 1877?

A. His name is McEwen, I think.

Q. Who was weighmaster?

A. I would not be positive; we have had a good many changes.

Q. Did you ever talk with either of them about this matter?

A. I do not know as I have privately, sir.

Q. Are they still on your boat?

A. They are, sir.
Q. Don't you know the name of your weighmaster now?
A. He may be a different one; we have made so many changes.
Q. Didn't you ever say to either of these men, the weighmaster or the engineer, that the owner of this canal-boat ought to be paid for his injury?
A. To the best of my knowledge, no, sir.
Q. Do you swear that you never did say so?
Q. To the best of my knowledge, no, sir.
Q. Will you swear that you never did say so?
A. I do not think, sir, I ever did.
Q. Will you swear to it?
A. I do not think I ever did, sir.
Q. Are you willing to swear that you never said that? I would ask his honor the court to make a statement.
By the COURT: Mr. Nash can ask you about that?
Q. You say that you made a statement to Captain Dewar within a few days after this occcurred; was that a written statement?
A. Not on my part, because I cannot write.
204 Q. It was verbal on your part; did anybody write it down to your knowledge?
A. I saw him using a pencil.
Q. Who; Captain Dewar?
A. Yes, sir.
Q. Have you ever seen that statement since?
A. It was shown to me a few moments ago, but I did not know what it was, because I could not read it.
Q. So you do not know whether what was shown you was the same that was written at the time?
A. I could not be positive.
Q. Was it read over to you a few moments ago?
A. Something was read over to me a few moments ago; it appeared to be something written down.
Q. Had you ever seen that statement, or heard it read to you before, since it was written?
A. To the best of my knowledge, no, sir.
Q. Have you ever talked with anybody about the matter since the time you made the statement to Captain Dewar until this statement was read to you?
A. I could not be positive.
Q. You have no recollection of having talked it over?
A. I have no recollection.
Q. You cannot say positively whether you have any recollection?
A. I could not say positively that I have.
Q. Do I understand you, captain, that the engineer that was with you last January is with you still?
A. Yes, sir.
Q. How about the weighmaster?
A. I could not say, sir.
Q. Where does your engineer live?
A. 13th street and 5th avenue, Brooklyn.
Q. What is his name?
A. McEwen.
Q. His full name?
205 A. I would not be positive of that; I think Cameron McEwen.

Redirect examination by Mr. NASH:

Q. You said that there was some conversation that you wanted to make an explanation about, state what that was?

A. There was a gentleman came to my boat, two or three times last summer, and wanted to enter into conversation. I had been out on the wharf at Catharine Ferry, and when I came on board the superintendent told me there was a man looking for me, and he was connected with the canal-boat that had been sunk. When I came on board he came around. I do not know what made me try to avoid him. I did not want to get into any conversation; he then followed me down into the engine-room; this day I got rid of him; he came again, I am not sure whether the following day or a day or two afterwards; he kept coming around the boat; at last I went into the engine-room; he followed me in there; he wanted to enter into conversation in connection with the sinking of this boat. I would not have any conversation with him privately, without there was a third party there; he asked some questions, if I knew about the sinking of this boat, the position, and whether it was fast, and whether I would go and see his attorney, and that I would get paid if I should go. I told him I did not want to have anything to do with the matter, but I said "If I have to go, I will go there and tell the truth." I have not seen the man since.

Q. How long ago was this?

A. Last summer.

Q. You mean this last summer?

A. No, sir; the summer a year ago. I think that is the man at the end of the table.

Q. That is Mr. Quick, the owner of the canal-boat.

A. I think that is the man.

206 FRIDAY, *October 19th*, 1877.

JOHN HEGERMAN, a witness called by claimant, being duly sworn, testified as follows:

Examined by Mr. NASH:

Q. Had you any connection with the elevator Metropolitan in September, 1871?

A. Yes, sir.

Q. What was your relation to it?

A. I was superintendent.

Q. Mr. Greenwood was captain?

A. He was.

Q. Do you remember of being engaged in putting grain into the Queen, on the 27th of September, 1871?

A. Yes, sir.

Q. Have you any book or memorandum with you which shows the dates?

A. I have.

Q. On the morning of the 27th of September, where had you been engaged in putting in grain? It was on the Nevada, wasn't it?

A. Yes, sir.

Q. And you went over the same day to the Queen?

A. Yes, sir.

Q. What boat did you unload at the Queen on the 27th of September?

A. The Sarah and Madonna.

Q. Were you at work all the afternoon with her?

A. I do not think I was all the afternoon.

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A. Yes, sir.

Q. And you went over the same day to the Queen?

A. Yes, sir.

Q. What boat did you unload at the Queen on the 27th of September?

A. The Sarah and Madonna.

Q. Were you at work all the afternoon with her?

A. I do not think I was all the afternoon.

Q. The last boat you unloaded from into the Nevada was the boat Race?

A. Yes, sir.

Q. That was on the 27th?

A. Yes, sir.

Q. And when you went over to the Queen, you began with the Sarah and Madonna?

A. Yes, sir.

207 By the COURT: Did you finish this Sarah and Madonna?

A. Yes, sir.

By the COURT: And she went away?

A. I do not know whether she went away or not; I could not say.

By the COURT: She must have gone away, if you commenced another boat.

A. Yes, sir; she went away from the side of the Metropolitan.

By the COURT: Another boat came to the side of the Metropolitan?

A. Yes, sir.

Q. What was that?

A. The Mary D.

Q. That was the next boat in order, was it, according to your memorandum?

A. Yes, sir.

By the COURT: Did you begin on her?

A. Yes, sir.

By the COURT: Did you finish her before this accident?

A. No, sir; we had not finished the Sarah and Madonna at the time of the accident, we were at work on the Sarah and Madonna at the time of the accident.

Q. And you did not finish the next boat until the next day, did you?

A. No, sir.

By the COURT: The Sarah and Madonna was at the Metropolitan at the time of the accident, was she?

A. Yes, sir.

By the COURT: This Mary D. came to the side of the Metropolitan to be unloaded after the accident?

A. Yes, sir; she lay at the side of the boat.

By the COURT: You did not finish the Sarah and Madonna before the accident; she was at the side of the Metropolitan unloading at the time of the accident?

208 A. Yes, sir.

By the COURT: Then another canal-boat came to be unloaded?

A. A second boat lay aside the Sarah and Madonna at the time of the accident.

By the COURT: I understand you that while the Sarah and Madonna was being unloaded the Mary D. lay aside the Sarah and Madonna?

A. Yes, sir.

By Mr. NASH: It is agreed that this Nevada sailed about three o'clock on this day. I want to ask you whether you remember a canal-boat coming in with a tugboat—a canal-boat which was afterwards sunk?

A. I recollect a boat coming in; yes, sir.

Q. Where were you when the boat came in with the tug?

A. I could not positively say whether I was on the elevator or on the boat.

Q. The boat that was being unloaded?

A. The boat that was being unloaded.

Q. Were you on one or the other, on the elevator or on the boat?

A. Yes, sir.

By the COURT: You were on the elevator or the Sarah and Madonna?

A. Yes, sir.

Q. As this boat with the tug was coming in the slip, did you have anything to say to any one on board the boat?

A. I did not until after the tug left the boat.

Q. What did you then say?

A. I will tell you a little how it happened. I think there was a line thrown from the boat that was coming in.

By the COURT: Do you know the name of that boat?

A. I could not tell the name of the boat.

By the COURT: Was it the boat that was afterwards sunk?

A. Yes, sir.

209 By the COURT: You followed it with your eyes, did you?

A. Yes, sir.

By the COURT: This boat that you think there was a line thrown from was the boat you afterwards saw sink?

A. Yes, sir.

Q. You think there was a line thrown from this boat to what?

A. To the outside boat alongside the elevators.

By the COURT: Can you call her by some name?

A. The Mary D.

Q. This line was thrown; what next?

A. I think then I spoke to the captain of the Kate Green, and said that he had better hurry and get up the slip, as the Nevada was going to sail shortly, and he probably would get drawn under the wheel if he did not get out of the way. He made some answer to it, but what he said I could not remember now. He made some answer to it, and with that I stepped back from the boat. Greenwood was on the bow of the Mary D., and he came down and said something to the captain. I do not remember what he said.

Q. What was the tone of their conversation?

A. Pretty much the same as mine, only more sharp than mine.

*B.* A louder voice?

A. Yes, sir; he made more noise than I did.

By the COURT: When you said this to him what was the condition of this line; where was it fast, if at all?

A. It was on the Mary D., I think; to the bow of that boat; and they were hauling. I think the captain, one, two, or three men were hauling on that spring line.

By the COURT: How do you mean hauling?

A. Pulling.

By the COURT: Standing still?

A. They were standing still or walking along.

Q. (By the COURT.) Which?

210 A. Walking along towards the end of the Kate Green.

By the COURT: Towards which end?

A. Towards the stern.

By the COURT: And pulling on the line?

A. Yes, sir.

By the COURT: What did you see after that was done, about this line or any other line?

A. All I saw was that they were pulling up—trying to get aside of the other boat—aside of the Mary D.

By the COURT: Then what happened?

A. Pretty soon the steamer started.

By the COURT: The line was in this condition?

A. The line, I think, was in this condition; I do not think they had fastened the line.

By the COURT: They had not fastened it on the Kate Green?

A. Not on the Kate Green; the men had pulled the boat pretty well up aside of the Mary D., and it was not but a short time after that the Nevada went out.

By Mr. BENEDICT: After what?

A. After they got up pretty near the side of the Mary D.; when they got out this Kate Green swung out and was drawn under the wheel I suppose.

Q. Did you remain in that position or go elsewhere?

A. I was on that boat and was near the elevator at that time; I did not stand there all the time; I was back and forwards most of the time on the elevator.

Q. Was the elevator at work at that time?

A. She was.

By the COURT: What became of the line?

A. I did not notice.

By the COURT: Did they hold on and pull, or let go?

A. I did not notice; I did not notice whether they let go of the line.

By the COURT: You did not notice what became of the line?

211 A. No, sir.

By the COURT: Did you see any other line from the Kate Green?

A. I did not; that is the only line I recollect seeing.

Q. How long did the Metropolitan lay there unloading grain into the Queen?

A. She lay there the next day, I think.

Q. At the same hatch?

A. I would not say whether the same hatch; they worked at the Queen.

Q. Did she lay aft all the time?

A. That I could not tell you, but she worked at the Queen.

Q. Until the 28th?

A. All of the 28th.

Q. How many canal-boats did you work on, on that occasion—on the 27th and the 28th—at the Queen?

A. Five boats.

Q. You began with the Madonna and continued with the Mary D.; that is the order in which it stands on your memorandum, is it?

A. Yes, sir.

Q. Did you work during the night of the 27th?

A. I did.

Q. Did you at that time unload any boat into the Queen called the C. H. Hart?

A. No, sir.

By the COURT: On either of those days?

A. No, sir.

By the COURT: Nor on any other day?

A. Not at that time.

Q. When was this memorandum that you hold in your hand made?

A. At the time I was working.

Q. It contains the name of the boat?

A. Yes, sir.

Q. The number of bushels unloaded from each boat?

A. Yes, sir.

212 Q. And the name of the concern that sent the boat to be unloaded?

A. No; it is mostly the parties that sold the grain—to their account, where I could get them.

By the COURT: Is this the original memorandum that you made?

A. Yes, sir.

Q. You made this at the time?

A. Yes, sir.

Q. It is in your handwriting?

A. Yes, sir.

Q. In pencil?

A. Yes, sir.

By the COURT: You made it the same day?

A. Yes, sir.

Q. You entered each boat as you finished it?

A. Yes, sir.

By the COURT: Not as you began it?

A. No, sir; I could not tell how much was in the boat until after I got through.

By the COURT: What do you say the entry contained?

A. The name of the boat, the number of bushels, and the consignee that received the grain in New York.

By the COURT: Do you mean the people that you understood owned the grain?

A. I could not tell.

By the COURT: What did you put on any name at all for?

A. So that I could give my return to the office. I am sent there to do the work. I have nothing to do with the pay.

By the COURT: How did you find out what name to put there?

A. Sometimes I would have a card come in and a sample, and whose name it was—to whose account it was; sometimes there was a sample, but would be no card.

By the COURT: What do you mean by "account?" Do you mean owner?

213 A. It may be the owner and may not.

Q. Did this Metropolitan belong to you, or to whom?

A. It belonged to the International.

Q. It belonged to an elevator company?

A. Yes, sir.

Q. Do you know the Scotia by sight?

A. By sight; yes, sir.

Q. Do you remember the Scotia being in that neighborhood on that day?

A. I think she was lying near the river, by the side of the Queen.

Q. Does that belong to the same company?

A. Yes, sir.

Q. When you saw this Kate Green, and spoke to the captain, what indications, if any, had the Nevada given that she was about to start?

Q. I saw her wheel had been in motion.

By the COURT: You had previously seen it in motion, or was it in motion at the time?

A. No, sir; it was not in motion at the time.

Q. By wheel you mean screw?

A. Yes, sir.

By the COURT: The screw of the Nevada was not in motion when you spoke to the captain?

A. I do not think it was.

By the COURT: But you had previously seen it in motion?

A. I think I had.

Q. Did you hear whistles or bells?

A. I think I heard bells before I noticed the Kate Green.

Cross-examined by Mr. BENEDICT:

Q. Are you still in the employ of this company?

A. No, sir.

Q. When did you leave their employ?

A. Four years ago, I guess.

Q. What employ are you in now?

A. I am lightering and weighing grain.

214 Q. Did you have charge of the Scotia, as well as the Metropolitan?

A. No, sir.

Q. Did each elevator have a superintendent?

A. Yes, sir.

Q. I understand you to say, that you have no recollection of the name of this canal-boat that came in?

A. No more than what I have heard, not of my own knowledge.

Q. You have no recollection of the name of that boat?

A. No, sir.

Q. Do you have any recollection of the names of any of the other boats, aside from your memorandum, that you discharged there?

A. No, I have none.

Q. Only from your memorandum?

A. Only from my memorandum.

Examined by the COURT:

Q. When you saw this Kate Green swing over, did the Mary D. swing over too?

A. No, sir.

Q. The Mary D. did not go off at all?

A. No, sir; she might have gone off a little ways.

Q. Did you see lines from the Mary D. that fastened her to the elevator, or to anything inside?

A. I saw that the boat was fast.

Q. When the Kate Green swung over to the Nevada, did these lines that fastened the Mary D. to the elevator, or the Madonna, or the Queen, did those break in any way, or part in any way, so as to let the Mary D. go over?

A. I do not think they did.

Q. Can you say that the Mary D. did not go over with the Kate Green?

A. I do not think she did, sir.

Q. Is your memory such that you can say that but one boat went over?

215 A. I was on the Mary D., and I do not think she went over; I could not swear positively that she did not go over.

Q. You cannot say whether you were afloat in that slip?

A. I can say that I do not think I was afloat.

Q. Is your memory such that you can say that?

A. Yes, sir; I think I can say that positively.

Q. That the Mary D. did not go over with the Kate Green, and that her lines did not part?

A. No; I am confident that the Kate Green was over there alone when she struck.

Cross-examination by Mr. BENEDICT resumed:

Q. Have you any recollection, aside from your memorandum, of the order in which these boats were discharged; all these five boats that you discharged on those two days?

A. I have not, sir.

Q. Have you any recollection, aside from your memorandum, as to the names of any of the boats in that slip?

A. No, sir; I have not now.

Q. Did I understand you right that you made this memorandum when you finished each boat?

A. I generally put the heading when the boat comes there, and finish it by putting the number of bushels after we get through.

Q. When you began work you put the name of the boat?

A. Yes, sir.

Q. And put the number of bushels after you got through?

A. Yes, sir.

Q. The only memoranda that you have on the 27th was of the Race to the Nevada, and the Sarah and Madonna to the Queen?

A. Yes, sir.

Q. Those are the only two entries under the date of September 27th, are they not?

216 A. Yes, sir.

Q. Then after the close of the 27th comes the 28th. Do you know of any reason why you should have departed from your usual custom in reference to the entries, in reference to any one of those boats?

A. Have you got my usual custom?

Q. You testified to it.

A. Not in regard to the dates.

Q. You testified that you entered the name of the boat when you began work upon it.

A. Exactly.

Q. Do you mean to say that you made the first entry, not on the date it appears here?

A. I entered the name of the boat when she came to the elevator, and when we finished her I put the date and the number of bushels.

Q. Then could you undertake to say that this September 27th was written on the 27th?

A. I will in that case.

Q. Why in that case any more than in any other?

A. Because there is another boat there that is finished on the 27th.

Q. You say that you put the date there when the boat is finished, no matter when she came there?

A. That is when I put the date, when she is finished.

Q. Then you would not undertake to say whether you began on the Sarah and Madonna on the 27th or not?

A. I would, because there is another boat right next that, that was done on the 27th, and it is not likely that I would commence that until I had finished the other.

Q. Are you able to testify, from your recollection, as to the position of any of these boats at any time?

A. Only those two that were alongside of the elevator; those were the only two that I could tell anything about.

Q. You only remember that there were two boats alongside of the elevator?

217 A. I do.

Q. As to what these names were you have no recollection, aside from your memorandum?

A. No, sir; that is all.

Q. Does your memorandum tell you anything except that after you finished the Sarah and Madonna you began on the Mary D.? Does it tell you anything else than that?

A. No, sir.

Q. Your memory tells you nothing with reference to the position of the Mary D.?

A. No, sir.

Q. Do you recollect whether there were other canal-boats in the slip besides those that were discharged into the Metropolitan elevator?

A. I recollect there was a boat lying aside of the Scotia.

Q. Are you able to say positively whether there were or were not other boats in the slip?

A. No, sir; I could not say.

Q. Have you any recollection of the hour when you began work on the Mary D.?

A. No, sir; I could not tell you exactly when I did.

Q. Have you any recollection whether you began work on the Mary D. by day or by night?

A. I should think——

Q. I want your recollection about it; I do not want what you think.

A. No, sir; I have no recollection.

By the COURT: Is there anything on that memorandum which tells you that you began work on the Mary D. on the 27th, and not on the 28th?

A. No, sir.

By the COURT: For all there is there you may not have touched the Mary D. until the 28th?

A. For all there is there I may not.

Q. Did you stay there day and night, both?

A. I did, sir.

Q. Did you sleep on board?

A. I did not sleep; I kept awake.

218 Q. You kept awake night and day?

A. Yes, sir.

Q. You were there then during all the day of the 27th, and all the 28th, and the night between the 27th and 28th, right straight through without any sleep?

A. Yes, sir; right straight through; that was a frequent occurrence.

Q. Have you any recollection of the moving away from your elevator of the Sarah and Madonna; do you recollect of seeing her when she moved away?

A. No, sir; I do not recollect it.

Q. Of course, you do not recollect seeing the Mary D. come alongside of the elevator, do you?

A. I could not say that I recollect it.

Q. You say you kept this memorandum-book for the purpose of making up your returns to the company?

A. No, sir; the returns are not made from that book.

Q. What book are they made from?

Q. They are made by the weigher; the weigher gives in his returns.

Q. Who was the weigher at that time?

A. Whiting; I think his name was Frank Whiting.

Q. Do you know where he is to be found?

A. He is weigher yet on one of the elevators, I believe.

Q. Did you know at the time the captain of either of these boats?

A. I did not, sir.

Q. Do you know now who was the captain of either the Mary D. or the Sarah and Madonna?

A. I do not know as I ever saw them since.

Q. Do you remember whether, when you were on the deck of this outside boat that you speak of, there was anybody else there belonging to the boat—the outside boat?

219 A. I could not tell you whether there was or not; I was on the stern of the boat; I saw Greenwood at the bow of the boat.

Q. Do you remember from which hatch of the canal-boat you were unloading?

A. No, sir; I do not.

Q. At the time that this accident occurred, do you recollect from which hatch you were unloading the canal-boat that you were unloading, whichever that was?

A. I do not, sir.

Q. Do you know the name of the tug that brought in this canal-boat that you speak of?

A. No, sir.

Q. You said you thought there was a line thrown, have you any recollection of seeing that line thrown?

A. No, sir.

Q. Where did you stand at the time when you had that conversation with the captain?

A. I stood on the stern of the boat; that was outside of the boat that the elevator was working on.

Q. Do you mean on the end out towards the river or towards the bulkhead?

A. Out towards the river.

Q. You do not undertake to say whether she lay bow in or bow out?

A. No, sir.

Q. How close to you was the man to whom you spoke?

A. I think, probably——

Q. Give your recollection.

A. I should say thirty feet; it might have been more, it might have been less.

Q. Are you able to say whether he was standing on the bow or stern of his boat?

A. No; I am not.

By the COURT: Was he on the end of his boat that was nearest to you or farthest from you?

A. He might have been midway of the boat.

By the COURT: You do not remember?

A. Not from memory, I could not say where he was on the boat.

220 Q. Do you recollect whether he was standing alone, or whether there was anybody with him?

A. I could not tell.

Q. Do you recollect what he was doing?

A. Yes; I think I do, he had hold of the line.

Q. Why do you say "the" line?
A. "A" line.
By the COURT: Do you mean anything when you say "the" line?
A. I mean a line—a single line.
Q. Do you remember whether that line that he had hold of was fast or not at the time when you spoke to him?
A. Yes, sir; it was fast when I spoke to him.
Q. Fast on the boat that you stood on?
A. Yes, sir.
Q. On the end that you stood on, or on the other end?
A. On the other end of the boat that I stood on.
Q. Was it after that conversation passed between you and him that you heard the talk between Greenwood and him?
A. It was after that; yes, sir.
Q. Did you step off the boat that you were on at that time before the accident?
A. Yes, sir; I was off that boat.
Q. At the time of the accident you were not on that boat?
A. I had gone off on to the elevator; whether I had returned on not I could not say.
Q. Of course you cannot give us any idea as to the time?
A. No, sir; I cannot.
Q. Do you remember seeing the canal-boat come over and be struck by the screw?
A. I did not.
Q. You did not see it struck?
A. No, sir.
By the COURT: Did you look over as she brought up against the ship?
A. No, sir; I did not see it.
221 Q. What first called your attention to the matter?
A. There was considerable noise there.
Q. You heard some noise and then you looked?
A. Yes, sir.
Q. That was after the vessels were in contact?
A. After it was done.
By the COURT: Did you look and see them in contact?
A. No, sir; I did not see it; it was done when I looked, and the Nevada was moving out.
Q. Do you recollect whether, when you did look, the two vessels were together or separate?
A. They were separate when I looked.
Q. Then I understand that you really have not any recollection about the position of this canal-boat after you turned away, after speaking to the captain, until after the collision took place?
A. No, sir; I do not think I had; I think I went on board of the elevator and came back.
By the COURT: You did not see her going over?
A. I did not see her going over.
Q. Do you remember what was done after the boat was struck, what was done with her?
A. She was hauled up the slip. Do you mean immediately after?
Q. Yes.
A. She was hauled alongside of the outside boat; the furniture, &c., nd tools, whatever they were, taken aboard of that boat. The horses or mules were taken aboard of that boat.

By the COURT: That is the boat that you have spoken of as standing on—as the outside boat?

A. Yes, sir; that is the outside boat.

Q. Let me ask you with reference to whether the captain of the canal-boat was pulling on that line, or whether he merely held it in his hand?

A. I think he was pulling.

Q. Then he was facing you, was he?

A. He was facing me.

222 By the COURT: He was pulling hand over hand, he did not hold it across his shoulder and run away with it?

A. That I do not remember.

Q. You must remember whether he was looking at you or not?

A. He was looking to me when I spoke to him.

By the COURT: And pulling?

A. And pulling.

Q. Does your memory serve you whether you saw him at all after that; before the blow?

A. No; I do not know as I did after that.

Q. Are you able to describe at all this boat that came in?

A. Yes, sir; I think she was an open boat.

By the COURT: This is the boat that you say was struck and sunk?

A. Yes, sir; I think it was an open boat, if I am not mistaken.

Q. What do you mean by an open boat?

A. The hatches run from one end to the other—pretty near.

By the COURT: No deck, except a little side?

A. No deck, except on the side of the boat.

By the COURT: A walking place on each side?

A. Yes, sir.

Q. Do you recollect the description of the boat that you were standing on?

A. No; I do not know as I do exactly know the description of it.

By the COURT: In this same respect?

A. I do not think it was such a boat.

Q. Do you recollect what kind of a boat it was?

A. I could not tell positively now what kind of a boat it was, but I know there was a boat there and I stood on it. I do not recollect what kind of a boat it was.

Q. (By the COURT.) Have you any recollection?

A. No, sir; not in regard to that.

Q. You have not sufficient recollection to say whether it was or was not the same kind?

A. No, sir; I could not say, at this present time.

223 Q. You say you think that this boat that came in was an open boat?

A. I think it was.

Q. Do you mean she had no hatches at all, nothing over her?

A. Now I could not say whether she was open from one end to the other or not; there was part of the boat that had large hatches, or else she was an open boat the whole length.

Q. Do you recollect what color she was?

A. No, sir.

Redirect examination by Mr. NASH:

Q. Have you any recollection about what time of the day you left the Nevada with the Metropolitan?

A. I have not, sir.
Q. It was some time on the 27th?
A. Yes, sir; some time on the 27th.
Q. Before she sailed?
A. Oh, yes, sir; before she sailed.
Q. Can you say about how long before she sailed?
A. I could not say how long.
Q. Was it after daylight?
A. I presume it was, but I could not say positively; we worked night and day. I could not keep that in mind.
Q. You are positive that some time on the 27th you went across from the Nevada to the Queen?
A. Yes, sir; I am certain of that.
Q. What was the process of unloading from the canal-boat into the Queen? Did it involve the bagging of the grain?
A. Probably it stands there (referring to memorandum).
Q. The work you did on the Sarah and Madonna, did that involve the bagging of the grain?
A. Yes, sir; it was put in bags.
Q. It was in bulk on the canal-boat and bagged?
A. It was bagged on the ship.
224 By the COURT: It was taken in bulk from the canal-boat to the ship?
A. Yes, sir; and bagged on the ship.
Q. Was it taken out by a leg of the elevator and poured into bags on the ship?
A. Yes, sir.
Q. The elevator is run by steam?
A. Yes, sir.
Q. Steam-power which hauls up the grain out of the boat and carries it over?
A. Yes, sir; and carries it over.
Q. Is it necessary that the boat which is being unloaded shall lie by the side of the elevator?
A. Yes, sir; that has got to be done.
Q. Looking at the quantity of grain which was bagged that day put in the Sarah and Madonna, how long would it take you to do that work?
A. That would be a difficult question to answer; it takes longer at one time than another.
By the COURT: You have got to accommodate the bagging?
A. In some respects.
By the COURT: If the bagging goes slow you have got to hold up?
A. Yes, sir.
By the COURT: If it is poured right into the ship in bulk it goes right along?
A. Yes, sir.
Q. Suppose they take it as fast as you supply it, how long would it take?
A. It would probably take two hours and a half at least. I am speaking of the elevator I was on; some can do more than others; we handle 7,000 bushels.
By the COURT: And bagged it?
A. Yes, sir; and bagged it as we went along.
By the COURT: If the bagging don't delay it?
A. Yes, sir; don't delay it or anything else.
Q. You generally handle 2,000 bushels an hour, do you?

A. Yes, sir; we frequently go 3,000.

225 Q. Is there anything that would show you how long you were engaged on the Sarah and Madonna?

A. There ought to be at the office.

Q. A return made by whom?

A. By Whiting.

Q. By Whiting, the weigher?

A. Yes, sir.

Q. While you were engaged in unloading the Sarah and Madonna, is it possible that the boat which lay outside of her, waiting her turn, may have been superseded by another boat coming in there?

A. I do not think so.

Q. While you were engaged on the Sarah and Madonna, and a boat lay outside waiting her turn, might she have gone away and another boat come there without anything appearing on your memorandum to show it?

A. No, sir; she would not have been apt to go away—it is not likely.

Q. You did not make any memorandum of the name of the boat until you actually began work upon it, did you?

A. No, sir.

Q. So that, supposing a boat called the Hart lay outside of the Sarah and Madonna and then had gone off to help this other boat, and another boat had been slipped in called the Mary D., there would have been nothing in your memorandum to show it?

A. No, sir.

By the COURT: And nothing to show that it was not the Hart?

A. No, sir.

Q. There is nothing in you' memorandum to identify the boat you stood on with the Mary D.?

A. No, sir; nothing in my book.

Q. And nothing in your memory?

A. No, sir.

By the COURT: And the Hart may have gone with the Scotia, may she not?

226 A. No, sir; because I should have noticed it had she gone away; she could not have gone away without my noticing.

Q. You say that the boat that lay outside of the Mary and Madonna took the horses and luggage and furniture off of the Kate Green?

A. I think she did.

Q. When you came to unload that boat into the elevator, have you any recollection of seeing there any of the horses or furniture or other things which had belonged to the Kate Green?

A. I do not recollect that I did; I did not pay much attention to it after it was all through.

By the COURT: You say the Scotia belonged to this same company?

A. Yes, sir.

By the COURT: Is there anything in the way you are paid that makes a competition between the boats to make you hang on to a boat?

A. No, sir.

By the COURT: It is all the same if the Hart was there for her to go to the Scotia, if she could get a chance there?

A. Yes, sir.

Q. There is no doubt that it was the Metropolitan that was at the afterpart of the Queen?

A. No doubt about it.

By the COURT: The Scotia was nearer the bow of the Queen than the Metropolitan?

A. Yes, sir.

By the COURT: And the bow of the Queen was towards the river?

A. Yes, sir; that is the way it was.

Q. Do you know what returns were made to the office as to the hours occupied by the unloading of the Sarah and Madonna?

A. No, sir; I could not swear to that.

Q. Have you seen the records?

A. No, sir; I have not seen the records.

227 Q. You are positive that there was no line parted that day on any of the boats that had been made fast to the elevator that day?

A. I am positive that I did not see any.

By the COURT: You are positive that the boat next inside this one that was sunk did not float out?

A. It did not float out, I am positive of that; it was not so but that I could step from one boat to another.

By the COURT: At the time that the accident happened?

A. I am positive that she did not go across.

By the COURT: She did not go adrift?

A. No, sir.

By the COURT: When you looked over and saw the Nevada going out after the accident, you saw this boat that was sunk off some distance from you?

A. Yes, sir.

By the COURT: Was there any other boat loose except her?

A. No, sir.

Recross by Mr. BENEDICT:

Q. Do I understand you that when you looked over, the boat that had struck had sunk?

A. No, sir; she had not gone down.

Q. When you looked over, was she fastened to the boats that were alongside of the elevator?

A. She had a line, and might have had two for all I know, but the boat that was next the boat that was working at the elevator was not loose, because I stepped from the boat that was at work at the elevator to that; they got lines from the boat that was sinking to the boats alongside of the elevator.

Q. Then you went from the elevator on to these other boats?

A. Yes, sir.

228 Q. You say that the outside boat did not swing out, because you were able to step from one to the other?

A. Yes, sir.

Q. That is the reason why you say she did not swing out?

A. Yes, sir.

Q. That is the only reason, is it not?

A. Of course, that is the only reason.

Redirect by Mr. NASH:

Q. Did your elevator stop working at this time?

A. No, sir.

Q. Working all the time that this occurrence took place?

A. Yes, sir; it kept on working.

Q. Could she have done that if the Sarah and Madonna had been adrift?

A. No, sir; she could not have done it if the Sarah and Madonna had been adrift.

WM. SHERRY, witness called by claimant, being sworn, testified as follows:

Examined by Mr. NASH:

Q. Were you captain of the lighter Julia in September, 1871?

A. Yes, sir.

Q. Do you remember being in the slip between Piers 46 and 47 when a canal-boat was sunk?

A. Yes, sir.

Q. Where was the Julia at the time the vessels came together?

A. It was lying at the bulkhead, at the stern of the steamship Nevada.

Q. (Showing witness chart.) Does that represent the position?

229 A. Yes, sir.

Q. Was there anything between you and the bulkhead?

A. No, sir.

By the COURT: There was nothing between you and the Nevada?

A. No, sir.

By the COURT: Were you bow in or bow out?

A. I was lying bow down the river alongside the bulkhead.

Q. Crossways of the slip?

A. Yes, sir.

Q. Yours was a sugar-lighter?

A. Yes, sir.

By the COURT: Discharging on the street?

A. Yes, sir; discharging on the bulkhead.

By the COURT: On West street?

A. Yes, sir.

Q. Did you see the Nevada go out?

A. No, sir; I was up at the sugar-house when the Nevada went out.

Q. Didn't you see her as she sailed out of the slip?

A. No, sir; I did not see the accident. I saw the canal-boat coming up the river with a tugboat; as I came up the slip she was alongside of me. I had a good, fair wind, and tried to get in ahead of her, but I could not. I wore off into the river to get away from her. When I got in I went to the sugar-house and came back. When I came back she was sinking.

Q. You came in after she did?

A. Yes, sir.

Q. You had no trouble getting in?

A. I had a little trouble to get by the yards of the ship.

Q. You were not towed in?

A. No; I sailed in.

Q. Do you remember what steamer there was on the other side of the slip?

A. No, sir.

230 Q. You know that there was a large steamer there?

A. Yes, sir; there was a steamer there either discharging or loading; it did not trouble me.

Q. You had to get into this slip without running foul of those boats?

A. Yes, sir.

Q. I want to know if you remember an elevator lying outside of the Queen?

A. Yes, sir; I think two elevators.
Q. One nearer the river, one nearer the stern of the steamer?
A. Yes, sir.
Q. How many boats were there alongside of the elevator?
A. I could not tell you, sir; I did not take any notice.
By the COURT: Did you notice where this canal-boat was when you sailed by her?
A. To the best of my knowledge—it is so long ago—I think she was hauling up by the first elevator, the elevator that was nearest the river. I know I passed her by in the slip. I know I was looking out to see that I didn't do any damage to the lighter.
Q. Did you notice where the tug cast her off?
A. Very nearly in the mouth of the slip.
Q. You say that you were in sight of her for some distance?
A. Yes, sir.
Q. And tried to pass her?
A. No, sir; she passed me.
Q. Did you notice any pumps on her?
A. Yes, sir; they were pumping her on the way up the river.
Q. How many pumps were going?
A. Two. That is the reason I passed the remark to my mate as I came up, "That boat must be leaking."
By the COURT: When you were sailing in by the Nevada, was her screw working?
231 A. No, sir.
By the COURT: Not at all?
A. No, sir.
By the COURT: Did you notice her screw working at any time after that?
A. No, sir; because I went up to the sugar-house.
By the COURT: Before you went up to the sugar-house, did you notice her screw in motion, or anything of that kind?
A. No, sir.
Q. You knew the Nevada was about sailing?
A. Yes, sir. I saw the flag up, the blue-peter; that is the sign for a pilot.
Q. Is that signal generally understood by men about the water?
A. Yes, sir.
Q. You had plenty of time to make fast after you entered the mouth of the slip?
A. Yes, sir; I took great notice; I could hardly get by the steamer's main-yards; I had to send a man up to clear the rigging, so as to get by.
By the COURT: That was the steamer that had the blue-peter on?
A. Yes, sir; lying on the opposite side of Pier 46.
Q. Was she in her usual berth there, or don't you know about it?
A. I don't know.

Cross-examined by Mr. BENEDICT:

Q. Where is the sugar-house that you went to?
A. In King street.
Q. When you came into the bulkhead, you had to get out your lines and make yourself fast?
A. Yes, sir; I and my mate. We made the boat fast, and I went to the sugar-house and reported.
Q. When did you take in your sail?

A. I took in my sail at the mouth of the slip.

Q. Did you have anything to do with the sail after you got to the bulkhead?

232 A. Tying up the clew of it.

Q. You had to secure your sail?

A. Only the clew of it; the rest of the sail is all secured.

Q. Do you remember how many lines you had to get out?

A. I had four lines to get out; two forward and two aft.

Q. You say there was no lighter between you and the bulkhead?

A. No, sir; no lighter in the slip except myself.

Q. Are you able to remember positively about it, whether other lighters came in after you?

A. There might have been other lighters that afternoon after me, but not to my recollection.

Q. I understood you to say that when you came back the canal-boat was sunk?

A. Yes, sir; was sunk underneath my bow. There was a steamer that pumps these sunken vessels out; she had hold of her at the time; they were putting the pump down into her hold.

Q. Was it the John Fuller?

A. Yes, sir; I know her well.

Q. Did you know the tugboat that had the canal-boat in tow?

A. No, sir; I did not take notice. I could not tell you the name of the tug or the canal boat. I saw them afterwards trying to suck the corn up out of the water.

Recess.

JOHN MCGIM, a witness called by claimant, having been duly sworn, testified as follows:

Examined by Mr. NASH:

Q. Are you one of the harbor-masters of the port?

233 A. At present; yes, sir.

Q. How long have you been so?

A. Something over four years.

Q. Have you ever followed the sea?

A. In the port of New York, practically, 45 years; otherwise, 52.

Q. (Showing witness chart.) This paper shown you is a chart representing the location of two steamships and some other boats between piers 46 and 47, on the 27th of September, 1871. I want to ask you whether, in that condition of things, it was prudent for a canal-boat, a third canal-boat coming into the slip, to make fast outside of two boats and an elevator, when she might have gone up the slip?

A. No, sir.

Q. If you had been on the spot when that third boat came in, what direction would you have deemed it your duty to have given?

A. Either to remove up to the bulkhead or to have kept out of the slip.

Q. Does that question come before you frequently, as harbor-master, for directions?

A. Yes, sir.

Q. Do you have any difficulty in making the canal-boatmen obey them?

(Objected to.)

Cross-examined by Mr. BENEDICT:

Q. What do you say as to the time when the flood-tide makes in the

North River as compared with the time stated in the Coast Survey tables?

A. You mean the difference between the East and North Rivers?

Q. Yes; give us that.

A. It averages, sometimes, from an hour and a half to two hours.

By Mr. NASH: The East River is earlier than the North River?

234 A. Yes, sir.

Q. What does the variation in the time depend upon?

A. The variation is caused in a great measure by the outflow of the fresh rivers above us, and the north winds; taking these two things into account, it averages from an hour and a half to two hours; when the winds are strong to the northward, the time is greater; when southerly winds prevail it is the other way.

Q. It is affected by the prevailing winds, and also by the condition of the tide and the freshet in the river?

A. Yes, sir.

Q. Do you know where those tide-tables for the Coast Survey Office gave high water at New York?

A. At Governor's Island.

Q. You understand that high water at New York is high water at Governor's Island?

A. Yes, sir.

Q. Do you understand that it is East River tide at Governor's Island, or North River tide?

A. East River tide.

Q. The tables give high water at 7.32 p. m., that, you would understand to be high water at Governor's Island—that is, of the East River?

A. Yes, sir.

Q. So that from this table you would not undertake to say how the tide was running at any point on the North River at any particular time.

A. Yes; you could say from experience and practice very near.

Q. Would you undertake to say from that table as to what time the water began to run up the North River on that day?

A. I should say from an hour and a half to two hours.

Q. The book gives the time of high water here at 7.32; I ask you whether from that you would undertake to say at what time on that day the water began to run up in the North River?

235 A. I told you that, as a general principle, it takes from an hour and a half to two hours.

Q. I ask you, when the tide is stated at 7.32 high water at Governor's Island, that means 7.32 p. m.; can you tell me from that what time the tide began to run up in the North River on that day?

A. I do not say on that day, sir; I might tell on general principles.

Q. Could you tell on general principles what time it would be?

A. I say from an hour and a half to two hours.

Q. At what hour?

A. I say it will flow beyond the high water in the North River from an hour and a half to two hours over what it will flow in the East River.

Q. Can you tell me according to your experience, at what hour on that day water began to run up in the North River?

A. No, sir; I cannot tell you, because I was not there.

Q. Your experience will not enable you to tell it?

A. I say from an hour and a half to two hours.

Q. With all your experience, you would not undertake to say at what hour of the day the water began to run up in the North River?

A. If I had been there as pilot of that ship, I would have known.

By the COURT: It does not begin to run up until an hour and a half after low water?

A. No, sir.

By the COURT: If you find low water and then add an hour and a half you will have it?

A. It comes into the North River an hour and a half later.

Q. It might have been one hour, might it not?

A. It might, I suppose.

Q. It might have been two hours?

A. Yes, sir.

Q. Where does flood-tide begin to run up first; in the middle of the river, or along the dock?

A. Along the dock.

236 By Mr. NASH: What is the reason?

A. Shoaler water.

THOMAS LOVE, a witness called by claimant, having been duly sworn, testified as follows:

Examined by Mr. NASH:

Q. Do you remember in September, 1871, a canal-boat being sunk in the slip between piers 46 and 47?

A. Yes, sir.

Q. Where were you that day?

A. On the steamer's deck.

Q. On the steamer Nevada?

A. Yes, sir; previous to the sinking of the boat.

Q. On that day you were on the Nevada?

A. Yes, sir.

Q. In what capacity?

A. Acting as stevedore.

Q. You were on the vessel till about the time she sailed?

A. I 'as on board the ship from 15 to 20 minutes of her sailing.

Q. When you were on board of the ship, did you see a tug coming into the slip with a canal boat?

A. Yes, sir.

Q. Where were you at that time?

A. Standing on the ship's deck.

Q. What part of the vessel?

A. What we call the poop quarter-deck.

Q. Towards the stern?

A. Close by No. 3 hatch; about midships, not quite; more aft than forward.

By the COURT: About three-quarters towards the stern?

A. Yes, sir.

By the COURT: No. 3 was the after-hatch?

A. Yes sir.

237 Q. What took place between you and anybody on board this canal-boat, if anything? Tell what took place.

A. About fifteen or twenty minutes previous to the ship's leaving the dock, I stood on the deck, as usual, giving my men orders to take the gear and span—what we use in discharging—off the ship. I looked and saw three canal-boats abreast, alongside of an elevator. I turned

around and sung out to them—to the person on the canal-boat, that he had better make fast, because the ship was going out. I could not tell the captain. I could not tell one from the other; he turned around, looked up to me and told me "What in hell is that to you?" or "Go to hell."

Q. Was that all that took place between you and this man?

A. Yes, sir.

Q. This rigging or tackle that you had been taking down was the tackle for putting in cargo?

A. Yes, sir.

Q. That was the tackle of which you, as stevedore, had charge?

A. Yes, sir.

Q. And you have been engaged in removing that?

A. Yes, sir; taking it on shore.

Q. After this conversation, where did you go?

A. I went on the dock.

Q. On the pier of the Nevada?

A. Yes, sir, Pier 46, when I got orders from the superintendent of the dock to take the gangway down.

Q. Was that your duty, to take down the gangway?

A. That is my duty. I got orders to take the gangway down. I took that down and put it one side, and then stepped aft, to the after-part of the ship. It is also my duty to see that the stern lines and everything of that kind is clear.

Q. Did you have anything to do with casting off the stern lines?

238 A. Yes, sir; I had ordered my men there to do so.

Q. You superintended it?

A. Yes, sir.

Q. Were they cast off?

A. Yes, sir.

Q. Was there any line broken on that occasion?

A. No, sir; none.

Q. As the vessel went out, how did she go out in reference to going alongside the dock?

A. She went out as usual, a foot and a half or two feet clear of the dock.

Q. Did her stern swing out at all?

A. No, sir.

Q. She went out straight?

A. Yes, sir.

Q. When did you see the canal-boat next, if you saw her at all?

A. I saw her next when she broke loose. I could not tell from the distance whether she parted her line or got adrift, but I saw her swing around towards the steamer; she swung right around.

Q. And came in contact with the steamer?

A. Yes, sir; and came in contact with the steamer.

Q. You saw that under the stern of the Nevada?

A. Yes, sir; I was on the string-piece of the pier.

Q. As the Nevada went along, you saw under the stern this canal-boat swing up against the vessel?

A. Yes, sir.

Q. Was there any other boat that swung up with her?

A. No, sir.

Q. How long had you been engaged as stevedore in connection with the Nevada?

A. Five or six years.

Q. Had you been in the habit of aiding to put the Nevada in her berth?

A. Yes, sir; that was my duty, as far as assisting her went.

239 Q. She had to back in, hadn't she?

A. Yes, sir.

Q. Was she lying on this day in her usual berth?

A. Yes, sir; she could not lay in any other way, on account of the openings in the dock.

Q. This was a covered pier, was it, and the openings were arranged to correspond with her hatches?

A. Yes, sir.

Q. About how far back did her bow lie from the end of the pier?

A. I never measured it; I should think from twelve to fourteen feet.

Q. Were the bells on board rung as usual on that day?

A. Yes, sir.

Q. What else did you see after the boats came together; after the canal-boat struck the steamer?

A. I don't remember of anything; I saw people on *h*oard of her and trying to save some furniture or something on board of the canal-boat, before she sunk.

Q. Had they got her into the slip?

A. She had got up to the upper end of the dock, alongside.

Q. What took place at *t*hat time was off in that part of the slip, was it?

A. Yes, sir.

Cross-examined by Mr. BENEDICT:

Q. You say that you were on the deck of the Nevada until about ten or fifteen minutes before she left; how long were you on deck in all?

A. My business is in and out on deck; sometimes two or three hours.

Q. Have you any recollection how it was that day?

A. I must have been there on deck some two or three times, because it was the day of sailing and the ship's hatches had to be finished; it is necessary to see that the hatches are finished and covered up.

240 Q. You think you might have been there two or three hours before she sailed?

A. I might have been in and out.

Q. You say you were standing by No. 3 hatch at this time; what were you doing?

A. I was standing on what we call the span-gear belonging to that hatch.

Q. What were you doing with the span?

A. I had been loading the ship previous to that.

Q. Were you still loading?

A. No, sir; I was taking it down.

Q. Was that the only span you had?

A. The only one we had at that time.

Q. Do you recollect whether the hatch was on at that time?

A. Yes, sir.

Q. Was it, or was it not?

A. Yes, sir; they were on.

Q. This No. 3 hatch was on at that time?

A. Yes, sir.

Q. And you were taking the span down?

A. Yes, sir.

Q. How long does it take you to take that span down?

A. Well, sometimes it takes us ten minutes, sometimes five, sometimes fifteen; that is according to how we can go to work.

Q. Was there anybody else there standing with you?

A. Several of the men that work for me were standing round working there.

Q. Do you know any of them?

A. No; I do not think I could pick any one out, because I work so many.

Q. You cannot remember the names now?

A. No; sometimes I hire fifty or a hundred men, strangers to me.

Q. You cannot remember the names of any of those that were there?

A. No, sir.

241 Q. Do you recollect at that time how many elevators there were in the slip?

A. Two.

Q. Do you recollect how many canal-boats there were in the slip?

A. I do not recollect of any only those three alongside of one of those elevators, and there was one alongside of the other elevator, as near as I can recollect.

Q. That is what I want to know, whether your memory serves you to tell positively the exact number of canal-boats that were there?

A. I can remember that there were three canal-boats lying alongside of the elevator that was lying alon'side of the afterpart of the Queen; I think No. 4 hatch.

Q. Can you tell positively the number of canal-boats that there were in the slip?

A. Altogether?

Q. Certainly.

A. No, sir; I never counted them. I know that I saw three alongside of that elevator, and the outside one broke adrift and came over across the slip.

Q. It didn't break adrift when you stood on the deck, did it?

A. No, sir.

Q. You say you will not undertake to say how many canal-boats there were in that slip?

A. No, sir.

Q. Did you know the name of any of the canal-boats?

A. No, sir; I never made it my business to ask when any canal-boat came in what its name was, where it came from, or anything else.

Q. When you first looked over you say you saw a tug coming in?

A. Yes, sir.

Q. Was it with this outside canal-boat?

A. Did I say so?

Q. I ask you whether it was?

242 A. I said so once.

Q. Did you know the name of the tug?

A. No, sir.

Q. Did you see the tug go away?

A. I don't remember anything about her going away.

Q. Do you remember anything about her staying there?

A. No, sir; when I was engaged in my business there I did not have time to look.

Q. Do you remember whether the tug came into the slip at all?

A. No, sir.

By the COURT: You mean you do not remember?

A. I mean to say that I do not remember; all I testify to is to that

fact, that I saw three canal-boats up alongside of the elevator, and I ordered them to make fast.

Q. You do not know anything about the tug?

A. No, sir.

Q. Are you sure that you saw the tug come in at all?

A. I did not say anything about the tug.

Q. You did not say anything about the tug?

A. I do not know that I told anybody that I saw a tug; I spoke of three canal-boats.

Q. I thought you said you saw the tug coming in?

A. No, sir; I did not say anything about the tug at all?

Q. Didn't you tell Mr. Nash, when he asked you, that you saw the tug?

A. No, sir; I did not say so.

Q. Didn't you say, when you were examined by Mr. Nash, that you saw the tug coming in with the canal-boat?

A. No, sir; I did not mention anything about the tug; I talked about canal-boats.

Q. After you went on the dock did you take down more than one gangway?

243 A. No, sir; only one.

Q. Which gangway was that?

A. What is termed the passenger gangway.

Q. How was that gangway rigged?

A. Put on the ship's rail with a lashing and lowered away with a fall as we pull it ashore.

Q. How long did it take you to get that gangway out?

A. About three to five minutes.

Q. You said you took that gangway down when you got orders; who gave you the orders?

A. Mr. Dewar.

Q. How long after you got on the dock did he give you orders?

A. I could remember—about a minute or two; it might be five or ten minutes.

Q. Was it fifteen?

A. No, sir; because the ship generally leaves as soon as we get the gangway down.

Q. It may have been fifteen minutes, may it not? You might have gone on the dock fifteen minutes before you got orders?

A. No, sir; I am generally the last man that leaves the ship.

Q. Do you remember how many lines there were out at the stern of the ship?

A. There were two lines.

Q. At the stern?

A. Yes, sir.

Q. Did you have anything to do with casting off the lines?

A. My men did; I did not handle them myself.

Q. Did you do anything about casting off the forward lines?

A. No, sir; not the forward end of the ship.

Q. Did you give orders about casting off lines at the stern of the ship?

A. At the stern of the ship; yes, sir.

Q. Did you do anything yourself about casting off those lines?

A. No, sir.

244 Q. Simply gave the orders?

A. Simply gave the orders.

Q. Do you know any man that did the work of casting off those lines?

A. No, sir; I might at the time, but now I do not remember; if you allow me to say, I have as many as fifty or a hundred men there; I could not tell one from the other as to who cast them off.

Q. Did you see the canal-boat after the Nevada started and before she was in contact with the stern of the Nevada?

A. Yes, sir.

Q. How far apart were they when you first saw them?

A. I suppose 25 to 30 feet before the Nevada started.

Q. Before the Nevada started at all?

A. Yes, sir.

Q. My question is whether you saw the canal-boat after the Nevada started and before the boats were in collision?

A. Yes, sir; I did.

Q. After the Nevada started, what was the distance between the two vessels when you first saw the canal-boat after the Nevada started?

A. After she made her first motion to start she was as much as 25 or 30 feet off from her.

By the COURT: What was 25 or 30 feet off?

A. The ship from the canal-boat, or the canal-boat from the ship.

Q. Could you see the canal-boat from where you stood under the stern of the Nevada?

A. Yes, sir.

Q. You would not undertake to say within ten feet how far they were off?

A. Yes, sir; I can measure ten feet or five feet with my eye.

Q. If you can measure it as close as that, I wish you would give it nearer.

A. I have given it within five feet—25 or 30 feet.

245 Q. You say that the Nevada lies so that her gangways are abreast of the doors in the side of the house?

A. Yes, sir.

Q. There are different doors in different places along the side of the ship?

A. Yes, sir.

Q. How many doors were there at that time? Do you recollect?

A. I think about four.

Q. Were there four gangways?

A. No, sir.

Q. How many gangways?

A. Three.

Q. Three gangways and four doors?

A. Yes, sir.

Q. When you say that the Nevada lay 12 or 14 feet back from the end of the pier, then her forward gangway would be by the front of the forward door, would it not?

A. Yes, sir.

Q. Do you know how far it was from that forward door to the next door?

A. I do not know exactly; I never measured it.

Q. You can tell within five feet, can't you?

A. It might be 30 feet.

Q. Can you tell us the width of those doors—the openings in the side of the house?

A. No, sir.

Q. Could you not estimate it with your eye, within five or ten feet?
A. No, sir; 15 or 20 feet.
Q. Did you see this canal-boat when she first moved—when she first began to be drawn over towards the Nevada?
A. Yes, sir; I stated that I saw her swing over.
Q. Did you see her when she began to move?
A. Yes, sir.
Q. Did you sing out?
A. Yes, sir.
Q. To whom?
A. To the people on the deck.
246 Q. To the people on the deck of the steamer?
A. No, sir; to the canal-boat.
Q. Did you sing out to the people on the steamer?
A. No, sir; I had no reason to sing out to them; I sung out to the people on the canal-boat, to look out.
Q. That was when you were on the deck of the Nevada?
A. No, sir; that was when she was swinging out.
Q. You did not sing out to the steamer at all?
A. There was no occasion to sing out to the ship that was going out of the dock.
Q. Are you in that employ yet?
A. No, sir.
Q. How long were you in the employ of that company?
A. Some five or six years, I believe.
Q. You say there were two stern lines; where did they lead to—whereabouts on the pier?
A. To posts on the pier where we generally make them fast.
Q. How did they lead with reference to the Nevada?
A. From the stern to the dock.
Q. Astern or abreast, or how?
A. Partly abreast and partly astern.
Q. Did they lead to different spiles?
A. No, sir, to the same spiles; the end part was fast to the dock; it only makes one line; it is what sailors call a bight.
Q. Do you call that two lines?
A. Yes, sir.
Q. Didn't you say that there were two lines.
A. No, sir; there were two parts of one line.
Q. Didn't I ask you how many stern lines there were out and you said there were two?
A. I said there was one; it was a misunderstanding about that point.
247 Q. Now you say there was only one stern line out?
A. One line consisting of two parts; the end and the bight that is thrown off the spile, and the minute it is let loose it lets the ship go.
Q. Do you recollect whether that line led to the stern of the Nevada?
A. I said partly abreast of the ship, and partly astern.
Q. Was the spile to which that led aft of the stern of the Nevada or not?
A. Yes, sir.
Q. How far aft of the stern of the Nevada?
A. Ten or fifteen feet; I can't say exactly.
Q. How far from that spile were you standing, when the *the* Nevada started?

A. I was standing right close to it.
Q. Close to the spile?
A. Yes, sir.
Q. Were you outside of the house or inside?
A. Outside of the house.

JOHN R. DEWAR, a witness called by claimant, having been duly sworn, testified as follows:

Examined by Mr. NASH:

Q. You were in the employment of the Williams & Guion line in September, 1871?
A. Yes, sir.
Q. In what capacity?
A. Marine superintendent.
Q. Does that involve the charge of the vessels while in port?
A. Yes, sir.
Q. How long have you been in their employment?
A. I have been in their employment 25 years and over.
Q. Are you generally on the dock the day the steamer sails?
A. Yes, sir.
Q. Is that part of your duty to be there?
248 A. Yes, sir.
Q. Do you remember the sinking of the Kate Green, in September, 1871?
A. I remember the circumstances.
Q. You remember the fact?
A. Yes, sir.
Q. Where were you when the Nevada started that day to go to sea?
A. On the end of the pier.
Q. The outer end?
A. Yes, sir.
By the COURT: Pier 46?
A. Yes, sir.
Q. How long did you stay there?
A. I stayed there until she was out clear of the pier.
Q. How did she go out?
A. Straight.
Q. Straight in a line with the pier?
A. Straight in a line with the pier.
Q. When did you first see or know anything of this canal-boat?
A. I hailed a canal-boat and a tug some few moments before the ship went out; I hailed the tug and told him the ship was going out; I said: "Do not go in the slip yet;" something to that effect.
By the COURT: You hailed the tug?
A. Yes, sir.
Q. The tug with a canal-boat?
A. Yes, sir.
Q. How long was that before the vessel sailed?
A. It might be 10 or 15 minutes.
Q. What did they do?
A. They did not do anything at all.
Q. Did they come into the slip?
A. I suppose she did; she was obscured.
Q. She turned into the slip?
A. Yes, sir; she was then obscured by the vessel from where I stood.
By the COURT: You were on the end of the pier at that time?

249 A. Yes, sir; on the north side of the pier.

Q. About how far back did the Nevada lie from the end of the pier?

A. About 13 feet.

Q. Was that her usual berth?

A. Yes, sir.

Q. What was the next you saw or heard in reference to this canal-boat?

A. I do not know who it was told me; some one told me that there was a boat sinking up the slip.

Q. How long was that after the Nevada had cleared the pier?

A. A few minutes after.

Q. When you heard that what did you do; did you do anything about it?

A. I went up on the pier; I cannot remember that I went for the Fuller or sent for him; I know I suggested it.

Q. You said something about getting the Fuller?

A. Yes, sir.

Q. How soon was this Kate Green pointed out to you, or did you see it that afternoon?

A. I do not remember that I recognized her name that afternoon.

Q. Did you see the boat?

A. Yes, sir.

Q. Where was she when you saw it?

A. Well up in the slip.

Q. What was being done with her, if anything, if you remember?

A. I do not remember of their getting those things out; I was more concerned about the boat's sinking.

Q. You did not see the two vessels come together?

A. No, sir.

Q. Did you undertake at that time or soon afterwards to find out the facts about it?

A. In a day or two.

Q. Whom did you see?

250 A. I saw Captain Greenwood.

Q. He was the captain of the elevator Metropolitan?

A. Yes, sir.

Q. Do you remember any one else?

A. I saw the captain of the lighter Julia.

Q. That was Sherry, who is here?

A. Yes, sir.

Q. How soon afterwards did you see Captain Quick in reference to the matter; Captain Quick the owner or master of the canal-boat?

A. I suppose I saw him about that time, but I would not recognize him now.

Q. He came to see Mr. Williams about it, didn't he?

A. Yes, sir.

Q. Were you present at the interview?

A. Part of the interview.

Q. That was within a short time after the occurrence?

A. Some little time after.

Q. The Nevada sailed that day at her advertised hour, did she?

A. About the time.

Q. How many passengers had she on board?

A. (Referring to memorandum.) 84 steerage and 23 cabin.

Q. Did she carry the mail at that time?

A. (Referring to memorandum.) Yes, we did carry the mail at that time.

Q. What is the usage of these vessels preparatory to starting, in reference to blowing the whistles and ringing the bells?

(Objected to.)

Q. What bells can you say were rung on that day?

A. I give the order.

By the COURT: Did you give the order?

A. I do not know that I did on that day; if I did not it was the exception.

251 Q. You generally give the order for the ringing of the bells?

A. Yes, sir.

Q. And you have no reason to suppose that it was not done that day?

A. Not the slightest.

Q. What bells do you give the order to ring?

A. One on the quarter-deck, and one on the bridge-deck.

Q. At what times are those bells rung?

A. Generally a few minutes before the ship goes.

Q. When Captain Quick saw Mr. Williams did he make a claim that his boat should be paid for?

A. I do not remember, sir.

Q. Do you remember any of the conversation that took place at that interview?

A. I remember a conversation that took place at one interview; I do not know whether he made a claim for his boat at that interview.

Q. The conversation that you remember—how long was it after the collision?

A. It might have been two or three weeks.

Q. Where did it take place?

A. In the hallway of 71 Wall street.

Q. Whose office was at 71 Wall street?

A. Williams & Guion, at that time.

Q. This Nevada belonged to an English corporation, known as the Liverpool and Great Western Steam Company?

A. Yes, sir.

Q. And their agents were Williams & Guion?

A. Yes, sir.

Q. And their office was at 71 Wall street?

A. Yes, sir.

Q. What did Captain Quick say in reference to the position of his boat, at the time, in giving his account of the occurrence?

A. I overheard him say to Mr. Williams that his boat was lying the third boat off.

Q. Off from the elevator?

252 A. He said the third boat off; I do not know whether from the elevator; and he was in the act of snubbing; then the ship started, and between the suction of the ship and the snubbing he parted his line, and the boat went over against the ship; that was his version at that time.

By the COURT: Did you understand what he meant by snubbing?

A. Yes, sir.

Q. What did you understand?

A. Snubbing means coming alongside of this (illustrating), and taking a turn, and another turn, and then you commence to bring her up; that is snubbing.

By the COURT: Does it mean fastening, or pulling, or what?

A. It means stopping her headway.

Q. It means checking the headway, by taking turns?

A. Yes, sir; checking the way of the vessel to the dock.

Q. Did you go over with Quick to see this boat?

A. I believe I did; yes, sir.

Q. She had been taken away from the slip, and beached somewhere; where was that?

A. She had been beached on the southeast side of Governor's Island.

Q. She had sunk in the slip, hadn't she, and been under water some time?

A. Yes, sir.

Q. The day that you stood at the end of the pier when the Nevada went out was there anybody in a small boat in the water, in the employment of the company?

A. There usually is.

Q. Was George Allen there that day?

A. I cannot say who.

Q. You know George Allen?

A. Yes, sir.

Q. What was his duty?

253 A. His duty was to be there; he has been there every day since, and if he had not been there that day he would have been discharged for not being there; his duty is to be out in the river, to see the vessels moving up and down the river; to see vessels that I could not see, and to tell me.

Q. When you came back from the end of the pier, the outer end of the pier, and heard of this accident, did you hear of any hawser being broken on the Nevada?

A. No, sir.

Q. When did you first hear that story?

A. When this trial commenced.

Q. Since this suit commenced?

A. Yes, sir.

Q. Mr. Quick never mentioned it in any of his talks with you or in your presence?

A. Not to my recollection.

Q. Did he ever claim that the stern of the Nevada had swung out from the pier?

(Objected to.)

Q. Did he ever say anything on that subject?

A. I never heard him say so.

Q. How often have you heard Quick tell his story; more than once?

A. I do not think I ever listened to him more than once.

Q. He says that you said when you went down to Governor's Island that you considered the boat a total wreck; what did you say of that character to Mr. Quick?

A. I do not remember what I said.

Q. What was the character of the boat as she then presented herself?

A. She looked pretty badly when she was beached.

Q. What was her character as to her age and condition, apart from this accident?

A. She appeared to be an old boat.

Q. Did he undertake to show you marks of the propeller's fans or blades?

254 A. He did.

Q. Did you see any such thing?

A. It did not appear to me; they ought to have put her on the dry dock to show that.

By the COURT: Was she so submerged in the water that you could not see them?

A. Yes, sir.

Q. You said that Quick tried to point them out?

A. That is my recollection.

Q. Mr. Beebe swore that his boat was fastened to the elevator by seven-and-a-half-inch line. What do you call the size of these lines that are now shown you (showing witness lines)?

A. That is a $6\frac{1}{2}$ inch; $7\frac{1}{2}$ would be an inch bigger than that; I could not get a $7\frac{1}{2}$-inch rope; there are none made except to order.

Q. (Showing witness ropes.) That is a $6\frac{1}{2}$ inch and that one $4\frac{1}{2}$, just as thesy are marked?

A. Yes, sir.

Cross-examined by Mr. BENEDICT:

Q. When you went over to look at that boat you say she was partly under water; how much under water was she?

A. I think at the time I went to look three feet under water.

Q. You do not mean that her deck was three feet under water?

A. No, sir; the bottom of the boat.

Q. Do you recollect whether she lay with one side higher than the other?

A. She lay end on to Governor's Island.

Q. Then her end was higher than her stern?

A. A little.

Q. Did you go alongside of her in a small boat?

A. Yes, sir.

Q. Do you recollect which side you went?

A. I believe we went on both sides, on the Brooklyn side.

255 Q. Was that the starboard or port side of the boat?

A. I think the starboard side. I think she lay with her bow on Governor's Island.

Q. That wasn't the side where she was struck, was it?

A. It never was clear to me where she was struck.

Q. Do you remember what was the condition of the side of the boat that you did see?

A. It was an old boat.

Q. I am not asking you about the age, but about the condition.

A. That is a part of the condition, you know, age.

Q. Not necessarily. Give the description; tell us what you saw.

A. Apparently whole.

Q. Any seams open at all?

A. That I do not remember.

Q. You say that you think Capt. Quick undertook to point out to you marks?

A. That is the best of my recollection.

Q. Do you recollect where he attempted to point them out to you?

A. On her bilge.

Q. Did he undertake to point them out below or above water?

A. I do not remember that; all I remember is that he undertook to point them out.

By the COURT: On her port or starboard side?

A. On her side towards Brooklyn. I think the boat had a list.

Q. Which side did she have a list?

A. On the starboard, if that was the side towards Brooklyn.

Q. If her port was over towards Brooklyn then she had a list on her port side?

A. Yes, sir.

Q. You went over in a small boat; didn't you get out on to the canal-boat?

256 A. I believe I did.

Q. Did you go down below?

A. I do not remember whether I did or not.

By the COURT: Did you see any name on her?

A. No, sir; I do not remember of reading any name.

By the COURT: You do not know now what her name was?

A. No, sir; I presume it was the Kate Green; everybody says so, but I have no remembrance.

Q. You did not think, did you, that the vessel was good for much as you saw her there?

A. No, sir; I did not think she was good for much.

Q. How did you come to go over there?

A. I think I was invited to go by Captain Quick.

Q. It was a mere friendly act, to accommodate him?

A. It appeared so at that time.

Q. Did you tell anybody that you were going? Did you tell Williams & Guion that you were going there?

A. I believe I did. I don't know whether I did or not.

Q. Didn't you go there in accordance with a suggestion from them that you should go over and look at the boat?

A. It may be; I do not remember.

Q. What did you go over there for?

A. To look at the boat and see if there were any marks on her.

Q. That was all; to see whether there were any marks on the boat?

A. Yes, sir. I believe there was some talk at that time of a compromise. I went to see what she was worth.

Q. Was not that a fact that you went over to look to see what amount of damage had been done to the boat?

A. If I could find it; yes, sir.

257 Q. And you found that something had damaged her?

A. I found that it had been lying in the water some time, and was covered with mud; the proper way would have been to put the boat on a dock.

Q. Did you make any report to Williams & Guion after you came back?

A. I may have made a verbal report.

Q. Do you remember whether you did or not?

A. No, sir.

Q. I understand you to say that you had a conversation with Captain Quick in the hallway of 71 Wall street?

A. No, sir; I did not say that.

Q. What did you say?

A. I said I overheard a conversation between him and Mr. Williams; I was coming out into the street, and just as I got to the front door I heard that.

Q. Was that the only conversation that you heard?

A. That is the only one that impressed itself on my mind.

Q. That, you think, was two or three weeks after the occurrence?

A. Yes, sir.

Q. Do you know how you happened to be there?

A. It was my duty to be down there every afternoon.

Q. Was there any appointment made with Captain Quick to meet you?

A. I do not think there was.

Q. It was mere accident you and Mr. Williams and Captain Quick meeting in the hall there?

A. If I remember right he was in the office when I came there.

Q. Wasn't there any conversation in the office?

A. I presume there was; but the only thing that impressed itself on my mind is what I overheard him say there; of his other talk I do not remember a word.

Q. Of what other talk?

258 A. What other talk there was between Mr. Quick and Mr. Williams.

Q. It seems to me a little singular that when Mr. Quick went to see Mr. Williams all the conversation you heard was outside?

A. I followed them out; Mr. Williams was conservative; Mr. Williams did not tell me what he said to Mr. Quick; I heard this because I happened to be there.

Q. You have no recollection of any conversation in the office at all?

A. No, sir; if I had I would tell you; I think Mr. Williams felt very kind towards Captain Quick at that time, and would have paid him, and that was my idea too.

Q. Is your remembrance of the conversation in the hall confined to that remark of Captain Quick?

A. I put that down; it seemed to me that it was worth remembering, and I took a memorandum of it at the time.

Q. Have you that memorandum?

A. Yes, sir.

Q. Have you any recollection of the remark aside from the memorandum?

A. I remember the position; I stood behind the other two, and I overheard the conversation; I am not repeating it exactly from memory, because I wrote it down.

Q. When did you make that memorandum?

A. Right away the same day.

Q. Aside from your memorandum, is it your recollection of what the captain was saying that he was snubbing his boat at the time?

A. I noted that conversation down; that is all I can say.

Q. Aside from your memorandum, have you any recollection about the captain saying that he was snubbing his boat about the time that the vessel started?

A. No, sir.

259 Q. Now, I understand you to say that you heard the captain say that his boat was lying the third boat off; is that your memory of the words he used, "the third boat off"?

A. My memory is based on what I noted down.

Q. Is that the extent of it—that it was the third boat off?

A. Yes, sir.

Q. Does your memorandum give the date of this conversation?

A. No, sir.

Q. Do I understand you to say that it is your impression that you gave the order for the ringing of the bells the last time before the ship started?

A. Yes, sir.
Q. Did you give that order from the dock?
A. No, sir.
Q. You gave that order from the ship?
A. I generally do.
Q. If you gave it at all you gave it from the ship?
A. It might have been done after I left the ship.
Q. I am asking about your giving the order?
A. I generally give the order.
By the COURT: Do you give the order before you leave the ship, or after you get on the dock?
A. Before I leave the ship.
By the COURT: He wants to know whether you recollect whether you were on the ship or on the dock when you gave the order?
A. I am never on the dock when I give it.
Q. How long before the ship left did you go out on the end of the pier?
A. I do not remember how long I was there. I remember there were a good many vessels going up and down; we never let the ship go out until the river is clear.
Q. Does your memory serve you now as to whether you went to the end of the pier and then went back aboard the ship again?
A. That I do not remember.
Q. It may be so?
260 A. It may be so; but it is not usual. After I leave the ship I do not go back again, as a rule, unless something happens; if there is any trouble I go back and ask what the trouble is.
Q. How long before the ship started would you give that order for the ringing of the bells?
A. About eight or ten minutes—the last bell.
Q. The last bell, that is the one that you say you gave the order to ring. Did you give the order to ring any except the last?
A. No, sir.
Q. Do you know whom you gave the order to to ring the bell?
A. No, sir; I generally give it to the chief officer or any one that is around there.
Q. You spoke of seeing a tug with a canal-boat coming into the slip; how long had you been on the end of the pier when you saw that?
A. I do not remember how long I had been there; I was standing and looking up and down. If things do not go right I do not make any motion until they are right.
Q. Did you give the report to the captain about the condition of things in the river before she started?
A. Yes; when things are right I wave my handkerchief to the captain on the bridge of the steamer. I stand there and look up and down, and when I think all is clear I wave my handkerchief to the captain.
Q. That is your rule?
A. Sometimes I am on the end of the dock a half an hour, sometimes ten minutes, sometimes five minutes; just according to the state of the river.
Q. How it was this day you do not recollect?
A. No, sir; but I do recollect about the boat coming up and my warning her not to go into the slip.
Q. Do you know what tug that was?
A. No, sir.
Q. You did not recognize the tug?

A. No, sir.

261 Q. Nor the canal-boats?

A. No, sir.

Q. Have you any memory as to the time that was before the ship started?

A. No, sir.

Q. Do you remember which side of the tug the canal-boat was?

A. No, sir.

Q. Do you remember whether you noticed pumping on the canal-boat?

A. No, sir.

Q. Did you get any answer from the tug?

A. I do not remember that I did; I never do, scarcely. He would be a very polite one if he would answer.

Q. I understand you that you have no memory with reference to this George Allen's being there on that day?

A. No remembrance of that particular day; no, sir. I do not call him to my mind as being there, but of course he was there; he will testify to that himself.

Q. Do you recollect anything about that tug, so as to describe how she looked; do you recollect anything about her color?

A. No, sir.

Q. Do you know the different kinds of canal-boats?

A. I know the difference between a deck canal-boat and one that has one hatch.

Q. Do you recollect anything about what kind of a canal-boat this was that you saw alongside of the tug?

A. No, sir.

Redirect examination by Mr. NASH:

Q. Some of the witnesses have spoken about the Nevada having worked her screw or fans that day some little time before starting; is that usual?

262 A. Yes, sir; that is usual to try the engine, to see if it works all right.

Q. When is that generally done—before the ship goes out?

A. About half an hour before the ship goes out. Up to that time the ship is securely moored. After the fan is worked, and is found that it is all right, then they single the lines—what we call singling the lines—leaving one good hawser out forward and one good hawser out aft.

Q. I asked you whether the Nevada was at her regular berth that day.

A. Yes, sir.

Q. She didn't lie any further backwards or forwards than her proper place?

A. No, sir.

Recross by Mr. BENEDICT:

Q. Didn't the Nevada sometimes lie further forward or further aft?

A. No, sir; we had one berth on the north side and one on the south side dug out; if she went further she would be ashore.

Q. Were there not different doors that you lay abreast of?

A. Yes, sir; different doors, because some of the ships are longer than the others.

Q. Is the Nevada one of the longest?

A. The Nevada was one of the shortest.

Q. How much astern did you have to dig out for the longest ship?
A. About 50 feet.
Q. Could not the Nevada have lain astern?
A. No, sir; because that is where we always put the Nevada, and she would just fit the doors.
Q. Wouldn't she fit the doors back further?
A. No, sir; it would not correspond with the hatches.
Q. What is the difference in the doors?
263 A. They are not regular. I cut the doors myself to fit the hatches. When we first went there it had been used by a side-wheel line of steamers, and the doors did not fit the ships. I cut the doors myself to fit the ships.
Q. Do you mean to say that the Nevada's hatches would not fit any of the doors except those which would bring her forward hatch at the forward door?
A. I mean to say that she would fit there better than elsewhere.
Q. Would she not fit elsewhere?
A. I do not think she would.

Redirect by Mr. NASH:

Q. What do you mean by saying that you dug out her berth?
A. We had a berth dug out.
Q. I want to know whether the digging out was because the slip had filled in.
A. Yes, sir.
Q. What was the width of this berth?
A. Forty feet, I believe.
Q. You mean it was dredged out?
A. Dug out 25 feet at low water; 40 feet from the side of the dock out into the slip.
Q. If her stern had swung out towards the canal-boats she would have gone aground?
A. Certainly.
Q. It was necessary for her to go out straight alongside the pier?
A. We have got aground many times in docking.
Q. Tell me when that space where the Nevada lay was dredged.
A. Dredged in April, 1868. The first ship we put there was the Montana; she grounded. As soon as she went to sea we dug out a berth, because, as I said, it had been used by a side-wheel line of steamers that did not draw as much water.
Q. You dredged a berth there in 1868?
A. Yes, sir.
264 Q. When it become necessary to dredge that berth out again?
A. In 1872—in the fall of 1872.
Q. Was it done then?
A. Yes, sir.
Q. The length of the Nevada is marked correctly on that diagram (showing witness diagram)?
A. Yes, sir.

GEORGE ALLEN, a witness called by claimant, having been duly sworn, testified as follows:

Examined by Mr. NASH:

Q. Had you any duties in connection with the Williams & Guion Steamship Line in 1871?

A. Yes, sir.
Q. What were your duties in September, 1871?
A. Boatman.
Q. When the vessel was about starting what were your duties in reference to being out in the river?
A. To stay right close by—not right close by, but by the bow of the ship—to see if everything was clear up and down the river.
Q. In a small boat?
A. Yes, sir.
Q. Rowing about?
A. Rowing about and lying still, and if I saw anything to report it.
Q. You were not made fast?
A. No, sir.
Q. Do you remember in September, 1871, hearing of a canal-boat being sunk in the slip?
A. I did two or three days afterwards.
Q. On that day where were you when the Nevada sailed?
A. Right at her bows.
Q. In a small boat?
265 A. Yes, sir.
Q. In the river?
A. Yes, sir.
Q. How far off from the pier—from the end of the pier?
A. About 25 or 30 feet.
Q. And you were there as a lookout, to look up and down the river?
A. Yes, sir.
Q. Were you there as the Nevada passed you going out?
A. Yes, sir.
Q. How did she go out?
A. She went right out straight.
Q. In a line with the pier?
A. Right in a line with the pier; she rubbed against the fender that is between the pier and her.
Q. Did she turn down before she got out of the slip?
A. No, sir.

Cross-examined by Mr. BENEDICT:

Q. You say that you heard of the sinking of this boat two or three days afterwards?
A. Yes, sir.
Q. Do you remember how you heard of it?
A. A messenger came down from the pier to tell me that I was wanted up at Pier 46, with a small boat, to take Captain Dewar down to where the boat lay.
Q. Did you take Captain Dewar down to where the boat lay?
A. Yes, sir.
Q. Did you see the boat?
A. Yes, sir.
By the COURT: Over at Governor's Island?
A. Yes, sir; she was aground at Governor's Island.
Q. That was the first time that you heard of the boat's being sunk, was it?
266 A. Yes, sir.
Q. Can you tell us how much of the boat was out of water as she lay at Governor's Island?
A. It must have been four or five feet, I guess; I did not measure it.

Q. Did you see the side of the boat where she was hurt?

A. No, sir; I rowed Captain Dewar all around the boat, on both sides, and we could not see any mark to see that anything struck her; I remember Captain Dewar saying, "I do not see anything that could have sunk that boat," in regards of anything striking her, and I looked around myself and I could not see either.

Q. Were not her seams open?

A. Her seams were open where the corn, I suppose, had burst them out; nothing like any hard knocks.

Q. Did you row over?

A. Yes, sir.

Q. Was there any talk at that time as to how the Nevada went out?

A. No, sir.

Q. No conversation at all?

A. No, sir.

Q. Nobody asked you or said anything about how the Nevada went out?

A. No, sir.

Q. When was it that any one first said anything to you about how the Nevada went out?

A. Nobody said anything to me.

Q. Never?

A. No, sir.

Q. Not until you were on the stand?

A. No, sir; I was asked how the Nevada did go out.

Q. That is just what I asked; when were you asked about it?

A. I think three days ago.

Q. That was the first time that you were asked?

A. Yes, sir.

267 Q. I understand you to say that your attention had not been called to the matter since the time it occurred?

A. Yes, sir.

Q. Do you recollect whether there was anybody in the boat with you?

A. There was nobody in the boat with me, sir.

By the COURT: Nobody went over with you and Mr. Dewar in the boat?

A. No, sir; only me and Captain Dewar.

Q. At the time you went over there was nobody with you and Captain Dewar in the boat?

A. No, sir; only me and Captain Dewar.

Q. Was there anybody in the boat representing the canal-boat?

A. No, sir.

Redirect by Mr. NASH:

Q. Was there anybody over there at the canal-boat except you and Captain Dewar?

A. No, sir.

RICHARD W. MASON, a witness called by claimant, being duly sworn, testified as follows:

Examined by Mr. NASH:

Q. Were you in the employ of the Williams & Guion line in 1871?

A. Yes, sir.

Q. What were your duties?

A. Storekeeper.

Q. Storekeeper on the pier?
A. Yes, sir.
Q. Do you remember of hearing of a canal-boat's being sunk on the day the Nevada went out?
A. Yes, sir.
268 Q. Where were you that day when the Nevada went out?
A. On the lower end of the dock.
Q. How near Captain Dewar?
A. I suppose I stood within 7 or 8 feet of him.
Q. On the same end of the pier as he was?
A. Yes, sir.
Q. And was within a few feet of him?
A. Yes, sir.
Q. Did you see the Nevada when she went out?
A. Yes, sir.
Q. How did she go out?
A. Went out straight in a line with the dock.
Q. Do you remember while Dewar was there hearing him give a hail of any kind?
A. Yes, sir.
Q. To whom?
A. To a tug-boat coming in with a canal-boat.
Q. Did the tug and canal-boat appear to be headed in the slip?
A. Yes, sir.
Q. About how far were they from the end of the pier when this hail was given?
A. I should think, when the hail was given, about 100 feet from the end of the dock.
Q. What was it that Captain Dewar said?
A. He hailed them and asked them to haul up abreast of Pier 47, as the Nevada was about going out.
Q. Was there any reply made to this—any words that you heard?
A. I do not recollect of hearing any reply.
Q. Was this hail loud enough to be heard?
A. Yes, sir.
Q. Where did this tug with the canal-boat go to; did they turn into the slip?
A. Yes, sir.
Q. When did you lose sight of her?
A. I lost sight of her after she got past the bow of the steamer.
269 Q. You say you stood there until the Nevada cleared the pier?
A. I stood there at the time the boat went out; at the time Captain Dewar hailed the steamer was not going out.
Q. Until what time did you stand there; had the Nevada started at the time you left the end of the pier?
A. Yes, sir; the Nevada was out at the end of the pier.
Q. Where did you go then?
A. I went up the dock to gather up the tools.
Q. When you were down at the end of the pier was it any part of your duty to see to the lines?
A. Yes, sir; it was my duty to let go the head line.
Q. Did you do anything that day with the lines?
A. Yes, sir; I let go the head lines.
Q. Yourself?
A. Yes, sir.

Q. Now, after the vessel had got out, and you went up towards land, what did you see or hear about this canal-boat?

A. It was two hours before I heard anything about the canal-boat.

Q. What had you been doing in the mean time?

A. I was fixing the fender on the lower end of the dock.

Q. Which side of the pier?

A. The north side.

Q. Where the Nevada had been lying?

A. Yes, sir.

Q. You did not hear anything about this canal-boat until two hours afterwards?

A. Two hours afterwards.

Q. What was her condition then when your attention was called to her?

A. I think the cooper told me there had been a boat sunk up the dock.

Q. Was she sunk at that time?

A. I do not know; I did not see her.

270 Q. You did not see her at all?

A. No, sir.

Q. You have spoken of yourself as storekeeper on the pier; what were your duties on the pier?

A. I had charge of the tools.

Q. And ropes?

A. Yes, sir.

Q. Everything that is left loose when the steamer sails?

A. Yes, sir.

Q. If there had been any broken hawser left on the pier that day would it properly have come to your notice?

A. Yes, sir.

Q. Did you see or hear of any such thing that day?

A. I did not, sir.

Q. It would have been a part of your duty to take charge of it if there had been any such thing brought to your attention, would it not?

A. Yes, sir.

Q. How long were you at work rigging up this fender?

A. Probably an hour.

Q. Whereabouts, with reference to the Nevada, was this fender that you were repairing?

A. The outer end of it lay within 5 or 10 feet of the end of the dock; from that it ran up the dock probably 30 feet.

Q. It lies lengthwise?

A. Yes, sir; lengthwise along the dock.

Q. Starting from where?

A. From the lower end of the dock; that is, the river end.

Q. And running along 30 feet?

A. Yes, sir.

Q. What had damaged that fender?

A. The ship pressing against it going out; Captain Dewar called my attention to it; he told me to let the fender in flush, so that the boat could not rub against the chain.

271 Q. The Nevada had scraped against this chain in going out?

A. Yes, sir.

Q. And you were engaged in repairing it then?

A. Yes, sir.

Cross-examined by Mr. BENEDICT:

Q. What chain is that you speak of?

A. The chain that holds the fender alongside of the dock.

Q. What you did was to change the position of that chain?

A. Yes, sir; to cut the fender and let the chain drop in, and put a shackle in.

Q. How long had the fender been there?

A. The fender, I suppose, had been there some four years.

Q. With the chain in that way?

A. No, sir; not with the chain in that way.

Q. How had the chain been during the four years?

A. The chain had been on there; there were two fenders, one made inside of the other, on the lower end of the dock; this fender had frequently been cast adrift by these lightermen coming in; the ship's side would scrape it.

Q. Do I understand that when you went to change that chain it was any different from what it had been before?

A. Yes, sir.

Q. How was it different from what it had been before?

A. Because the chain of those fenders frequently parted.

Q. The day you went there it had not parted, had it?

A. No, sir; not at that time.

Q. I ask whether the chain was not the same that it had been before?

272 A. No, sir.

Q. How was it different?

A. Because the chain had been parted before.

Q. It did not part on that day?

A. No, sir.

Q. The chain hung outside of the fender, as I understand?

A. The chain went around the fender.

Q. On the outside?

A. Yes, sir; clear around.

Q. How long had the chain been in that way clear around the outside of the fender?

A. It had probably been that way a month; it might have been two months.

Q. What you did was to change the position of that chain?

A. Yes, sir.

Q. Did you say that the fender had been damaged?

A. It had been damaged previously to this.

Q. How long previously?

A. I could not say.

Q. Some weeks before?

A. It might have been a week before, and it might have been three weeks before.

Q. It was not damaged on this occasion?

A. No, sir.

Q. Was it your business to have charge of casting off the head lines?

A. Yes, sir.

Q. Who gave you orders to cast off the head lines?

A. Captain Dewar, sir.

Q. Where was the head line made fast on the pier?

A. On the spile at the end of the pier.

Q. How far back from the end of the pier?

A. I never measured it; two feet to three feet; perhaps five feet.

Q. Were you standing there with the line when you say you heard this hail?

273 A. No, sir. At the time I heard the hail I was pulling up this chain and taking it in. We have to pull up the chain as the ship is going out. We have to get it in snug alongside of the dock.

Q. At the time you heard this hail you were fixing the fender—raising the fender—is that it?

A. I cannot say that I was fixing the fender at that time; I might have just stood up after fixing it.

Q. How long did you stay there at that place?

A. I went back and forth from the store-room until I saw Captain Dewar coming down. When I saw him coming down I went out to the end of dock.

Q. After you were fixing the chain you say you went back to the store-room?

A. Yes, sir; I went back to the store-room.

Q. Then did you go back again out to the end of the pier?

A. Yes, sir; when I saw him coming.

Q. When you saw Captain Dewar coming?

A. Yes, sir.

Q. Where did he come from?

A. I can't say.

Q. He came from the direction of the gangway?

A. Yes, sir.

Q. Then you went with him to the end of the dock; is that so?

A. No, sir; I went out ahead of him.

Q. You went ahead of him, and he followed after?

A. Yes, sir.

Q. How long after you got to the end of the dock did the ship go out?

A. It might have been ten minutes; it might have been fifteen.

Q. Do you recollect how long you were in the store-house before you saw Captain Dewar coming again?

A. No, sir.

By the COURT: Did Captain Dewar go out twice to the end of the pier?

274 A. Yes, sir; he went out the second time. The store-room is right on the end of the pier; there is merely a partition of inch boards.

Q. I understand you to say that at the time you heard the hail you were doing something about the chain or the fender?

A. I say that I might have been doing it. I might have been fixing the fender about that time.

Q. Then I understand you that about that time you went into the store-room?

A. Yes, sir.

Q. And you stayed in the store-room you do not know how long?

A. It may been a minute.

Q. It might have been a minute; it might have been longer, might it not?

A. Yes, sir.

Q. You stayed there until you saw Captain Dewar coming down the dock?

A. No, sir; I was busy with my duty.

Q. Didn't you stay in the store-room until you saw Captain Dewar coming down the dock?

A. I could not answer that, sir. I might have come out half a dozen times.

Q. After you went into the store-room you did see Captain Dewar coming down the dock, didn't you?

A. No, sir; after I came out of the store-room I saw him coming down the dock.

By the COURT: Did you see Captain Dewar coming down the dock?

A. I saw him; I went into the store-room, and when I stepped out again—it might not be more than a minute—I saw him coming; he may not have been more than 20 feet from me.

By the COURT: After you heard this hail by Captain Dewar did you see him go away?

A. Yes, sir; after Captain Dewar hailed he went in through the door.

Q. He went into the house, did he?

A. Yes, sir.

275 By the COURT: After this you saw Captain Dewar come out?

A. Yes, sir.

By the COURT: He came to the end of the pier again?

A. Yes, sir.

Q. Then you went to the end of the pier again, as I understand you?

A. No, sir; I told you I went out before the captain; when I saw Captain Dewar about 20 feet from me I went out.

By the COURT: When Captain Dewar got to the end of the pier the second time how long was that before the Nevada started?

A. It might have been ten minutes.

Q. I understand that after the vessel sailed you did not go back for an hour or two; did not go back to the upper end of the pier?

A. Yes, sir; I went up shortly after the boat sailed—probably ten minutes. It is my duty, when the boat goes out, to dip the flag when the boat dips her flag.

Q. How long after the vessel sailed were you at work at that fender?

A. It might have taken me half an hour; it might have taken me an hour; I could not say.

Q. Do you recollect whether you went up to the other end of the dock before you finished that fender?

A. Yes, sir; I did.

Q. When did you go up to the other end of the dock?

A. As soon as I had hauled the flag down on the lower end of the dock—after dipping the flag.

Q. Whereabouts toward the other end of the dock did you go?

A. Probably two-thirds of the way up, to pick up the tools.

Q. Have you any recollection of how many tools you picked up?

276 A. I picked up all the tools that are usually there—crowbars, box-hooks, &c.

Q. You say that you did not see any broken hawser. Did you have charge of the broken hawsers?

A. Yes, sir.

Q. Can you tell any occasion that you took charge of a hawser that was broken when the ship went out?

A. Yes, sir; I took charge of one on the Wyoming; I could not tell you the exact day.

Q. Was there any question ever asked you, before you went on the stand, as to whether you took any charge of a broken hawser on that day?

A. Yes, sir.

Q. When was your attention called to that?
A. A couple of days after the occurrence.
Q. By whom?
A. By Captain Dewar; he asked me if there had been any line parted; I think a couple of days; it might have been a little longer; I would not swear to the exact day.
Q. Did he say that he had heard that there was a line parted?
A. No, sir.
Q. How did he come to ask you whether there was a line parted?
A. I do not know, sir; I did not ask him.
Q. You are positive he asked you at that time as to whether there had any line parted?
A. I am positive he asked me, but whether one day or a week after I can't say; a short time after the occurrence.

Redirect by Mr. NASH:

Q. Has he ever asked you at any other time?
A. Yes, sir.
Q. It is a common question, is it not, after a vessel goes out?
A. Yes, sir.
Q. It is your duty to pick up all lines?
277 A. Yes, sir.
Q. This Pier 46 is a covered pier, is it not?
A. Yes, sir.
Q. How near the end of the pier does the roof come?
A. About 20 feet.
Q. That space of 20 feet is uncovered?
A. Yes, sir.
Q. The store-house that you speak of is a room at the river end of the pier?
A. Yes, sir.
Q. Only a few feet from the end?
A. Yes, sir.
Q. When you went into the shed you went from the end of the pier, where you had been standing, into this room?
A. Yes, sir.
Q. How is that room closed?
A. With sliding doors.
Q. When it is all open there is an open space?
A. Yes, sir.
Q. When you saw Captain Dewar go down the pier do you know how far he went?
A. No, sir.
Q. When you saw him come back you went out on the end of the pier?
A. Yes, sir.

ANDREW M. UNDERHILL, a witness called by claimant, having been duly sworn, testified as follows:

Examined by Mr. NASH:

Q. You are connected with the Williams & Guion Steamship Line?
A. Yes, sir.
Q. How long have you been connected with that line?
A. About fifteen years.
Q. What is your position?
278 A. Clerk.

Q. General freight agent now, are you not?

A. I have general charge of the steamship business.

Q. In 1871 what was your position?

A. I acted then as assistant to Mr. Williams; freight clerk and general clerk.

Q. Do you remember the occurrence of the accident to the Kate Green the day the Nevada sailed in September, 1871?

A. I heard that was the name of her.

Q. You remember the circumstance?

A. Yes, sir.

Q. Where were you that day?

A. Shortly before the time for the steamer's sailing I came up from the office with the dispatches.

Q. From the office down town?

A. Yes, sir; I went on board of the steamer, and when the bell rung for the passengers to go ashore I went ashore also.

Q. Before going ashore had you noticed anything about canal-boats lying on the other side of the slip?

A. I went to the starboard side of the ship and looked into the slip; I noticed there were two elevators and some canal-boats in the slip.

Q. You say after the bell rung and the passengers were going ashore you went ashore?

A. Yes, sir.

Q. Did you notice how many canal-boats there were against the elevator?

A. I simply noticed that there were some canal-boats there; I could not say whether there were more than two; I am certain there were as many as two.

Q. After you went ashore where did you stand while the vessel was going out?

A. Right at the gangway of the steamer.

Q. That is, the after gangway?

A. Yes, sir.

Q. How near the water's edge?

A. On the string-piece.

279 Q. So that the vessel passed right in front of you as you stood there?

A. Yes, sir.

Q. How did the Nevada go out, with reference to the piers?

A. Went right out close to the dock, not exceeding five or six feet from the string-piece.

Q. As she passed you how far off was her rudder?

A. I did not notice the rudder at that time; I had noticed it before that time. When the steamer started and had gone out about seventy-five feet I looked to the stern of the ship to get her draft; that was the first thing that I wanted to see; this was before she got out; I was standing about 150 feet from the stern of the ship when she started; then I could not see the draft. When the draft came in view I looked at it; it is marked on the stern-post.

Q. Did you notice how far that was from where you stood?

A. Yes, sir; it was not exceeding thirty feet from the string-piece, and it was not less than twenty-five.

Q. That is about half the beam of the vessel?

A. A little more than half the beam of the vessel.

Q. Half the beam of the vessel would be how much?

A. About twenty-one and a half feet.

Q. The width of the vessel is about forty-two feet?

A. I think it is.

Q. You say that this rudder-post, or post that had the draft marked upon it, was about 25 or 30 feet from the string-piece; was it abreast of you at that time?

A. No, sir; the vessel had gone forward about seventy-five feet; I was looking under the counter.

280 Q. What did you see then, with reference to these canal-boats?

A. I saw the end of a canal-boat coming out nearly at right angles to the pier from behind the rudder, and it appeared to swing towards the dock and the rudder—towards Pier 46; it came, I should think, within fifteen feet of Pier 46, and struck the rudder, and then went up the slip with the swash from the screw.

Q. What was your impression at the time as to whether she was struck by any of the fans or blade of the screw?

(Objected to.)

Q. The rudder is behind the screw?

A. Yes, sir.

Q. What is about the length of the rudder?

A. I should think about three feet; the distance from the rudder-post to the outside edge of the rudder, the rear edge of the rudder, not the width of the rudder itself, I should think would be about three feet.

Q. What is the length of the screw?

A. The space between the screw and the inside edge of the rudder I should think would be two feet, or two and a half feet.

By the COURT: Two feet from the rear end of the screw to the forward end of the rudder?

A. Yes, sir.

Q. What is the diameter of the screw; do you remember?

A. I cannot tell the exact diameter of the screw; it reaches up to the 22-feet mark.

Q. What is the length of the axle of the screw; do you know?

A. Four or five feet.

Q. Did you see any concussion between any blade of the screw and the canal-boat from where you were?

A. No, sir; there was a tremor of the boat as it struck the rudder.

281 By the COURT: Why do you say the rudder struck and not the blade?

A. Because the boat was in such a position at that time that the screw could not strike it; the rudder struck it when I saw it.

Q. At that time the boat had so swung around that in her position she would not be reached by the screw?

A. Yes, sir; she was nearly at right angles with the ship.

Q. As the Nevada went out of the slip, did you follow down to the end of pier?

A. When I saw the canal-boat was clear of the ship, and had swashed up the slip with the swash from the screw, it flashed through my mind as to whether there was any necessity of looking after the boat, with reference to her being hit by the screw; I supposed by the position she was in when I saw her that the screw had not touched her; so I looked at the steamer as she passed by me. As soon as the stern had passed by me I went on the dock and followed the steamer out.

Q. Did she go out straight all the way?

A. Yes, sir.

Q. How long before you came back from that end of the pier?

A. I should think it would take ten or fifteen minutes.

Q. When you came back what was the position of this canal-boat?

A. The canal-boat was lying in the middle of the slip, at an angle of about forty-five degrees with the pier.

Q. How near the bulkhead?

A. I did not notice. She was not near the bulkhead at all.

Q. There was a number of people on board?

A. A number of people on board the canal-boat, passing up furniture and different articles out of the cabin. There were a number of men forward, apparently taking the roof off of the stable, and
282 getting up a kind of skid or gangway, apparently for the horses to walk from the boat. There was another boat lapping on her in that position (illustrating). They were passing this furniture over on to that.

Q. That was the boat that was aiding to get the furniture out?

A. Yes, sir; they were apparently pulling the two boats alongside of each other; they had not got the boats alongside of each other enough to get the horses on board of them. There was considerable confusion on both boats.

Q. Was Mr. Williams on the pier that day?

A. I do not remember.

Q. He is now dead, is he?

A. Yes, sir.

Q. Has been dead about a year?

A. Yes, sir.

Q. Did you see anything of a broken hawser that day after the Nevada went out?

A. I have tried to connect the two circumstances together since I have heard about there being a broken hawser, but so much time has elapsed since that I cannot do it. I remember standing in the same position on that dock and seeing a hawser as the ship was going out, and one of the officers trying to cut it, making an ineffectual attempt to cut it, and the hawser was finally run out and left there; but I cannot connect that circumstance with the circumstances of this day, and I do not think it was this day.

Q. You do not recollect of that occurrence; of trouble with a hawser that day?

A. No, sir; I cannot connect those circumstances as being on that occasion.

Q. Was there anything that occurred that day to check the ship's headway as she went out?

A. I cannot remember any such circumstance; I would state also that these two canal-boats that were diagonally in the slip had an angle of about forty-five degrees. The second boat was appar-
283 ently fast to the boat that was being worked at the elevator; one end of her was fast to that boat, the other angling out in the slip about forty-five degrees; the boat that was sinking was at the same angle, only lapping about fifteen or twenty feet over the bows, so that brought this boat pretty well over towards Pier 46. They lay in that position when I went up the dock.

Q. You remember Mr. Quick, the master of that canal-boat?

A. Yes, sir; I have seen him several times.

Q. He called about his claim at the office?

A. Yes, sir.

Q. By how many different parties has it been presented since?

A. I have argued the question with three or four different parties at different times. I think I have written a number of letters about it.

Q. Did you explain the circumstances every time, as far as you understood them?

A. Yes, sir; as far as I saw them myself, and as far as I could get the evidence from other people.

Q. Was there a claim made by the insurance company that had a policy on the grain?

A. I think there was some legal firm that pretended to represent them.

Q. And then afterwards by the receiver of the company?

A. Yes, sir; some time afterwards, and then, I think, there was a legal firm making inquiries about it after that.

Q. No suit was ever commenced until this libel was filed?

A. No, sir.

Q. What was the position of the Nevada with reference to her usual berth?

A. Exactly the same position that she always had.

284 Cross-examined by Mr. BENEDICT:

Q. What was there that called your attention to the draft of the ship?

A. The habit of looking at it every time the ship goes out.

Q. Nothing but that?

A. No, sir; I want to know what it is to put it on my records.

Q. You keep a record of that kind?

A. Yes, sir.

Q. With reference to every ship that goes out?

A. Yes, sir; it is a very important item.

Q. What was the first you saw of this canal-boat?

A. The bow of the canal-boat, as I suppose—an end of the canal-boat—appeared in view under the counter.

Q. As you looked by the stern of the ship?

A. Yes, sir; as I looked by the stern of the ship, looking at an angle to the direction of the ship.

Q. Did the canal-boat move faster than the ship?

A. Yes, sir; she was at that time moving faster than the ship. She got up with the ship; came up behind the ship in this direction (illustrating); she hit the edge of the rudder as the ship was moving forward.

By the COURT: The boat came around and followed up and hit the end of the rudder; is that it?

A. Yes, sir.

Q. How much of the canal-boat could you see behind the rudder?

A. Not to exceed fifteen feet that was in sight in the view that I got; I had stood one hundred and fifty feet from the end of the ship, and the ship had moved about half that distance, so that I was looking at an angle, and I could not get the exact bearing of the boat from where I stood.

Q. This part of the canal-boat that you saw was astern of the rudder, I understand you?

A. Yes, sir.

285 Q. Could you see anything of the canal-boat; is there a place between the rudder-post and the stern-post that you can see through?

A. You could if you were abreast of it.

Q. Could you from where you were?

A. I was at an angle; I do not think you could see through; you would be looking angling at it.

Q. Do you remember what the draft of the ship was that day?

A. I do not of my memory; I could ascertain by referring to my record.

Q. You say that you went to the end of the dock; did you go in the house?

A. Yes, sir; I was in the house.

Q. You were in the house?

A. The shed comes right to the edge of the dock; I stood in one of those openings that is made for the skids.

Q. So that when you went down the dock you went inside of the shed?

A. Yes, sir.

Q. Do you recollect when you got to the end of the shed where the steamer was?

A. I think I walked right down alongside of her stern; all the way down.

Q. When you got out on the end of the dock have you any present recollection as to where the vessel was?

A. No; I could not say; it would simply be my opinion; I cannot get anything positively fixed in my memory that would not be an unusual circumstance; it was not a usual circumstance to look over the side and see that the slip is clear, although I occasionally do it.

Q. As you walked down the pier, can you remember how many doorways you passed?

A. No, sir.

Q. Do you remember whether they were open or shut?

A. Only from what they would usually be; I do not recollect
286 anything connected with it but what would be an extraordinary occurrence; anything out of the way brought to my attention would be noticed; I do not remember the bells ringing or whistles blowing, but if they had not done so I would have noticed it.

Q. You have no memory of noticing the position of the ship excepting when you were looking at her draft?

A. One thing I remember positively was the circumstance of looking over her side.

Q. I am not asking you about that; after the vessel started you have no memory of looking at the ship, and observing her position at any time, except when you looked at her draft?

A. That is what I say; I remember the unusual circumstances connected with the case, but nothing that was usual; I do not remember that I saw the draft on that occasion, because it was simply a usual circumstance; but I do remember seeing this boat coming in sight.

Redirect examination by Mr. NASH:

Q. This vessel carried the mail at that time, did it?

A. I believe so, sir.

Q. It has been stated that there were eighty-four steerage and twenty-three cabin passengers on the 27th of September; there is ordinarily a good deal of a crowd about the deck on such occasions, is there?

A. Yes, sir.

Q. Do you remember how it was on that day?

A. No, sir.

Q. When are the mails generally brought down; how long before the vessel starts?

A. The vessel generally waits for it.

Q. That is one of the last things?

A. Yes, sir.

Q. And you came there with dispatches from your own office?

287 A. Yes, sir.

Q. And arrived there only a short time before she started?

A. Yes, sir; that is, in ninety-nine times out of a hundred; that is the course I pursue; I do not say that I did on this occasion; I might possibly have been up there half an hour.

Claimant rests.

CHARLES A. GATES, a witness called by libellant, having been duly sworn, testified as follows:

Examined by Mr. BENEDICT:

Q. You are the captain of the tug that took the Kate Green in on this afternoon?

A. Yes, sir.

Q. When you took her in was there any hail to you from the end of Pier 46?

A. Not to my knowledge; I might have been hailed, but I did not hear it.

Q. Where was that canal-boat when you separated from her?

A. She was fast alongside of another canal-boat made fast outside of an elevator, on the port quarter of the steamer Queen.

Q. Did you leave her in the mouth of the slip and let her run into the slip herself?

A. I did not; there might have been two canal-boats between her and the elevator; there was certainly one.

Q. Do you remember whether there was a canal-boat at the stern of this canal-boat that she was alongside of—I mean further out in the slip?

A. I know that there was one or more fast to the first elevator as we entered the slip.

Q. That is not the elevator that she went alongside of?

A. No, sir.

288 Q. Was there on that occasion any warping in of this canal-boat by a line?

A. No, sir.

Q. You testified that you were in the slip at the time of the collision?

A. I did, sir.

Q. Why didn't you go out before the Nevada started?

A. I was blocked by a tow-boat entering the slip broadside, with a barge alongside.

Q. Did you notice where that boat came from; did she come up from behind you?

A. She was not there when I went in.

Cross-examined by Mr. NASH:

Q. Did you make any record of the transactions of that day?

A. No, sir; I did not.

Q. When was your attention first called to it?

A. In what manner?

Q. In any manner as to what took place that day.

A. At the time of the occurrence.
Q. What called your attention to it then?
A. I naturally would take cognizance of anything that occurs of that kind.
Q. When did you ever talk with anybody about it afterwards?
A. I do not recollect.
Q. Did you ever talk with anybody about it afterwards?
A. I have talked with several; yes, sir.
Q. When?
A. I do not recollect the occasions nor the persons: I have spoken in a disinterested way of the accident as something unusual.
Q. When did you first have any conversation of that kind?
A. Probably the same evening after the occurrence.

289 Q. When did you ever see Captain Quick about it?
A. I think the captain came to see me, probably about a year ago.
Q. For the first time?
A. Yes, sir; to the best of my recollection.
Q. Did you go over the case then with him?
A. I do not remember.
Q. Did you have any conversation with him about it?
A. I did.
Q. About the circumstances?
A. Nothing any more than if I recollected the circumstance of the sinking of the boat.
Q. Up to that time had you had any conversation with anybody from the time that it first occurred, September, 1871, up to a year ago?
A. Yes, sir.
Q. With whom?
A. Several boatmen.
Q. Had you seen Quick in that time?
A. No, sir.
Q. Who did come to you?
A. Boatmen.
Q. Strangers to you?
A. Not strangers to me; no, sir.
Q. Persons that had no interest in the matter?
A. I do not know.
Q. Did you ever have any lawyer talk to you about it?
A. Not previously to Captain Quick talking to me.
Q. Do you know what a blue-peter is?
A. Yes, sir.
Q. Do you know what it is for?
A. It is generally hoisted on the vessel's foremast as a signal that she is preparing for sea.
Q. Did you look at the Nevada that day?
A. I did not, sir; not as high as that.

290 WILLIAM TIMMINS, a witness called by libellant, being duly sworn, testified as follows:

Examined by Mr. BENEDICT:

Q. What is your business?
A. Wrecking master.
Q. In whose employ?
A. J. C. Duyster & Son.

Q. Do you remember raising the canal-boat Kate Green?
A. Yes, sir.
Q. In 1871?
A. Yes, sir.
Q. What did you do in reference to raising her?
A. I raised her; tried to turn her up on her side; I tried to save the corn from running out of the bottom, but could not do it, and took her over to Governor's Island and left her there.
Q. Why could you not prevent the corn from running out?
A. The bottom and side had separated.
Q. Do you recollect on which side?
A. On the starboard side.
Q. Did you examine the starboard side of that boat after you got her raised?
A. Partly.
Q. I wish you would describe to the court what you saw as to the condition of the starboard side of that vessel.
A. About 30 feet from her bow the side was broke in—from that to her stern, and the bottom pulled away from the side.
Q. Were there any indications as to whether that was done by a blow?
A. I think it had been done by a blow.
(Objected to by Mr. Nash.)
Q. Were there any indications whether that had been done by a blow?
291 A. The side was broke in; cut in several places.
Q. Were there any indications as to whether that was a blow from above down or from below up?
(Objected to by Mr. Nash as incompetent, not being in rebuttal.
Mr. Benedict offers the evidence as rebuttal to show that the steamer had a right-handed screw).

Examined by the COURT:

Q. Where was it that you saw these cuts in the side and bottom; at what place was the vessel?
A. Between Piers 46 and 47, North River.
Q. And you tipped her up?
A. Yes, sir.
Q. And you saw her above water?
A. We rolled her on the side.
Q. With your machine?
A. Yes, sir.
Q. Did you turn her up so that the keel was out of water?
A. No, sir; right on the side.
Q. How long was this after she was submerged?
A. Probably about 8 days.
Q. You say the side was cut in several places?
A. Yes, sir.
Q. At intervals do you mean?
A. Yes, sir.
Q. What space was there between the cuts?
A. To the best of my memory they were three to eight feet apart.
Q. How many cuts in number do you remember?
A. I do not remember, sir.
Q. More than one?
A. Yes, sir; four or five.
By Mr. BENEDICT: About the same distance apart?

A. No, sir; some of them further apart than others.

292 By the COURT: And you remember the appearance of the cuts, do you?

A. Yes, sir.

Q. Describe the appearance of the cuts; take each cut by itself.

A. Just a score right in the side of the boat.

By the COURT: You mean a slit?

A. Just a score.

Q. Towards the keel?

A. Towards the bottom; she had no keel.

Q. Not cut through?

A. No, sir.

Q. Were there any indications about these cuts in the way of splinters, or anything of that kind?

A. Yes, sir.

Q. Which way did the splinters run?

A. The splinters ran down, as though the blow had been downward from above.

Examination by Mr. BENEDICT resumed:

Q. Were the seams drawn apart?

A. Yes, sir.

Q. To what extent?

A. In some places two inches apart.

Q. Do you remember how the sides were fastened?

A. Bolted through.

Q. From the rail through to the bottom of the side?

A. Yes, sir.

Q. Were any parts of the boat drawn away from those bolts?

A. Drawn away so that I could see the bolts; I could see the bolts through the seams.

By the COURT: That was at the time you raised her?

A. Yes, sir.

Q. Were there any of these marks on the other side of the boat?

A. The other side of the boat I could not see.

293 Cross-examined by Mr. NASH:

Q. How did you raise this boat?

A. I had a boat on each side, and chains under her.

Q. How did you get her turned over sideways?

A. Jacked her up; lowered one side away and jacked the other side up.

Q. How many chains did you have under her?

A. Three.

Q. One at the bow, one under the stern, and the other amidships?

A. Yes, sir.

Q. How did you fasten those chains?

A. Put them underneath her.

Q. Fastened around her with one end on each boat?

A. With an end on each boat.

Q. How many men were there there altogether?

A. I do not recollect now how many there were; six or seven.

Q. Was there any question asked you about these gashes at the time?

A. No, sir.

Q. When was your attention first called to it, in reference to this question?

A. My attention was first called to it at that time.
By the COURT. After this time that you turned her over?
A. Nobody ever asked about it afterwards.
Q. Never from that time until when?
A. Until the present time.
Q. When were you asked about it at the present time?
A. To-day.
Q. Who asked it?
A. The captain.
Q. He asked you if you remembered these gashes?
A. Yes, sir.
294 Q. How many of them were there of them?
A. I do not know the number; it may have been 6 or 8.
Q. Have you any recollection?
A. Not of the number; no, sir.
Q. Did you make any memorandum of it at the time?
A. No, sir.
Q. Can you recollect where the first one was—the most forward one; how near the bow?
A. I cannot recollect; I should think 30 feet from the bow, the first gash.
Q. How far from the stern was the last one?
A. I think about five feet.
Q. And you say that they were at regular distances?
A. Yes, sir.
Q. Did these gashes go through the planks?
A. They did not; no, sir.
Q. How deep were they; half an inch?
A. Yes, sir; some of them two inches.
Q. You said something about the bottom of the boat; how far down towards the bottom of the boat were these gashes?
A. Right down at the bottom, about 3 feet from the bottom, and went down to the bottom.
Q. You say there was no keel on this boat?
A. No, sir.
Q. How wide was her bottom?
A. 17 feet.
Q. Were the gashes under the bottom of the boat or was it where the boat curved under?
A. There was no curve under it; it was square-cornered; she was a flat-bottomed boat.
Q. And these gashes were on the side?
A. Yes, sir.
Q. You gave some reason why you could not save the grain by turning her up on her side; will you explain that?
A. Her bottom kept falling off all the time.
295 Q. The bottom of the scow kept falling off from the upper part; is that it?
A. Yes, sir.
Q. These gashes were on the upper side of the boat?
A. Yes, sir.
Q. How near did they come to the top of the side of the boat?
A. About six feet, I suppose.
Q. How far was it from the top of the side of the boat down to the bottom?
A. About 9 feet.

Q. So these gashes were about three feet long?
A. Yes, sir.
Q. Were they straight up and down?
A. I do not recollect whether they were right straight or not.
Q. Were they circular?
A. They were pretty nearly straight.
Q. Do you mean to say now that your attention was called at the time, by yourself or any one else, to the course of the splinters?
A. No, sir; it was not called to the course of the splinters; they wanted me to look at the boat, so that I would be prepared to testify about it.
Q. You expected to testify very soon, didn't you?
A. Yes, sir.
By the COURT: Why do you say the cuts ran downwards from the top; rather than upwards from the bottom?
A. The splinters ran down.
By the COURT: You just now said you did not look at the splinters?
A. I did not say I did not look at the splinters; I said nobody called my attention to the splinters.
By the COURT: The splinters ran down?
A. Yes, sir.
Q. Did you ever see a piece of wood that was struck by a left-handed screw?
A. I do not know that I ever did.
296 Q. Did you ever see one that was struck by a right-handed screw?
A. I do not know that I ever did see one struck by a right-handed screw.

Redirect examination by Mr. BENEDICT:

Q. Did these marks that you saw have anything to do with the chains that you put under her?
A. No, sir.
Q. What was the timber at the bottom of the side of this boat?
A. Hard wood, about ten inches square.
Q. And the bolt that you speak of went through that timber?
A. Yes, sir.
Q. Was there grain enough in that boat to start the seams by the swelling of the seams?
A. That I do not know.
Q. Do you know how much grain there was in her when you raised her?
A. When we got her over to Governer's Island there was probably 300 bushels of grain in her; not over that.
By the COURT: When you raised her which way did her bow lie?
A. Head in the slip.
By the COURT: Bow square in?
A. Yes, sir.
By the COURT: Square toward the bulkhead?
A. Yes, sir.

SARGEANT J. QUICK, the libellant, recalled, testified as follows:

Examined by Mr. BENEDICT:

Q. When the tug-boat was taking you to that slip did you hear any hail from Pier 46?
297 A. No, sir; I did not hear any.
Q. Did you hear the testimony of two witnesses, that a tug-

boat cast off a canal-boat in the mouth of the slip; did you hear that testimony?

A. Yes, sir.

Q. If there was a canal-boat cast off in the mouth of the slip, was that your canal-boat?

A. No, sir; it was not.

Q. Did you hear the testimony of Captain Greenwood?

A. Yes, sir.

Q. Did any such conversation pass between you and Captain Greenwood as he testified to?

A. No, sir; I deny it. I do not make a practice of swearing, and did not at that time.

Q. Did you hear the testimony of Mr. Jennings, a stevedore on board of the Queen?

A. Yes, sir.

Q. Did you hear what testimony he gave with reference to a conversation between him and yourself?

A. Yes, sir; I heard that.

Q. Did any such conversation as that pass between you?

A. No, sir; I do not remember of his ever saying a word to me. I do not remember of any such talk; I never was hailed from that boat at all.

Q. Did you tell anybody that the matter of pulling your canal-boat in there was a matter of your own business, and they might mind their own business?

A. No, sir; I heard some one call that I could go up in there.

Q. Where did that come from?

A. I think from the first elevator; some one; I could not say who.

Q. Did you throw out any line to the Hart, and warp your boat in?

A. No, sir.

Q. Was there any pumping of your boat as you were coming up the river?

298 A. No, sir; not any; there was no occasion for it.

Q. What was the condition of the C. H. Hart as to leaking?

A. She was leaking; I helped to pump her that day after my boat sank; I stayed on her that night.

Q. Did you tell Mr. Dewar you were in the act of snubbing your boat at the time the Nevada started?

A. No, sir; I had no such talk with Captain Dewar, as I remember.

Q. How was the fact? Was there any snubbing of your boat at the time the Nevada started?

A. No, sir; we were tied fast to the Hart then, just as she started.

Cross-examined by Mr. NASH:

Q. You say you did not warp into the slip at all; how did you get in?

A. We were towed in by a tug.

By Mr. BENEDICT: Was there any hail to you from the Nevada?

A. No, sir.

By Mr. BENEDICT: Before she started?

A. No, sir; none.

By Mr. NASH: I understand you to say there was no hail to you from anybody?

A. No, sir; I did not say from anybody; there was no hail to me from the Nevada.

Q. Was there any hail to you from anybody?
A. No hail of her starting.
Q. Was there any hail to you from anybody?
A. Only to run up into the bulkhead, and wait my turn for unloading.
Q. I understand you to say that at the time you say you made fast to the Hart you had not the slightest idea that the Nevada was going out?
A. No, sir; I had no knowledge that she was going.
Q. Had you any idea that she was going?
A. No, sir.
299 Q. You had not the slightest idea that she was going out?
A. No, sir.
Q. I ask you before you made fast had you any idea at all that the Nevada was going out?
A. No, sir.
Q. And you stick to that now?
A. I do.
Q. What lawyer's hands did you first put this claim into?
A. I had not put it into any hands.
Q. Did Mr. Leavenworth have it in December, 1871?
A. No, sir.
Q. How did he come to write to Williams & Guion about it?
A. I was telling him about it and he wanted to take it in hand, and he wrote to Williams & Guion; I did not tell him to do it.
Q. Mr. Green was a member of assembly, wasn't he?
A. Yes, sir.
Q. Did not he have it?
A. No, sir; he did not; he was mortgagee.
Q. Mortgagee of your boat?
A. Yes, sir.
Q. When did you put it into Mr. Lewis's hands, about 1875?
A. Yes, sir; in November, I think, 1875, about a year ago.

By Mr. BENEDICT:

Q. Who is Mr. Leavenworth?
A. A lawyer in Syracuse; I have done carpenter work for him; it is H. C. Leavenworth.

Testimony closed.

300 U. S. district court, southern district of New York.

SERGEANT J. QUICK
*vs.*
STEAMSHIP NEVADA, &c.

*Stipulation.*

It is stipulated by and between the parties hereto that the following interrogatories and cross-interrogatories may be put to Sergeant J. Quick, the libellant herein, by any commissioner or notary public authorized to take depositions for use in said court, and may be returned, together with the sworn answers to the same, to the proctor for the libellant herein, a copy thereof to be furnished by the proctor for the libellant to the proctors for claimant immediately upon the return thereof.

It is further stipulated that the said deposition, when executed and returned, may be read in evidence in this cause and used upon the argument thereof, with the same force and effect in all respects as if the same had been duly and regularly taken and introduced in evidence; the parties waiving the usual and regular commission.

NEW YORK, *October* 23, 1877.

It is further stipulated that 3 certain weigher's certificates, marked 1, 2, and 3, be admitted in evidence as competent proof of the facts therein stated in the above-entitled action.

OCTOBER 24, 1877.

301 SERGEANT J. QUICK, the libellant herein, examined under a commission, by A. Judd Northrup, commissioner, on the 31st day of October, 1877, at Syracuse, New York, being duly sworn, deposes and says:

Q. Do you recollect what kind of a canal-boat the C. H. Hart was on the 27th day of September, 1871? If yea, describe her as well as you are able to do, stating particularly whether or not she was an open boat.

A. I recollect what kind of a canal-boat the C. H. Hart was on the 27th of September, 1871; she was a quarter-deck scow-boat; open through her middle; was what we call a quarter-deck open scow; she had about three or four feet of deck on each side, and open in the middle.

Cross-examination:

Q. Was the canal-boat C. H. Hart unloaded while you were upon or about her, on the night after the Kate Green sank? If yea, when was she unloaded, and at what elevator, and if at one of the two lying next the Queen, state whether it was the one lying nearer the river or the one nearer the bulkhead?

A. The canal-boat C. H. Hart was unloaded while I was upon her, on the night after the Kate Green sank; I and my crew stayed upon her; she was unloaded by the elevator Scotia, lying beside the steamer Queen; that is, the elevator was lying beside the steamer Queen, at her bow hatch, nearest the river; the Queen's bow was lying out toward the river, and the elevator Scotia was at the bow end of the Queen, next to the river.

his
SERGEANT + QUICK.
mark.

302 *Weigher's certificates.*

(Copy.)

27 SEPT., 1871.

Pier 46, N. R.
Per elevator Metropolitan.
From boat Sarah and Madonna.
To ship Queen.
6,850 bushels of wheat.
In bin.
In bgs mkd.
In bgs mkd.
In bgs mkd.

Arrived
Com'd 1.30 p. m. 27 Sep. Finished 5.30 p. m. 27 Sep.
Trim'd by Screenings lbs.
Inspector.
Overtime. bushels.
Bags stowed.
JNO. HEGEMAN, *Inspector.*

(Copy.)

SEPT. 27, 1871.

Pier 46, N. R.
Per elevator Metropolitan.
From boat Mary D.
To ship st'r Queen.
7,393.0 bushels of wheat.
In bin.
In bgs mkd.
In bgs mkd.
In bgs mkd.
Arrived.
Com'd 5.30 p. m. 27. Finish'd 11.30 p. m., 27.
Trim'd by Screenings lbs.
JNO. HEGEMAN, *Inspector.*
Overtime. bushels.
Bags stowed.

303 (Copy.)

28th SEPT., 1877.

Pier 47, N. R.
Per elevator Scotia.
From boat C. H. Hart.
To ship st'r Queen.
8,257.13 bushels of corn.
In bin.
In 2,642 bgs. mkd.
In bgs. mkd.
In bgs. mkd.
Arrived.
Com'd 8.10 p. m., 27th. Finished 1 a. m., 28th.
Trim'd by Screenings lbs.
UNDERWOOD, *Inspector.*
Overtime. bushels.
Bags stowed.

(Copy.)

SEPT. 28, '77.

Pier 47, North River.
Per elevator Metropolitan.
From boat W. W. Arnold.
To ship st'r Queen.
7,188.30 bushels of wheat.
In bin.
In bgs. mkd.
In bgs. mkd.

In bgs. mkd.
Arrived
Com'd 7.30 a. m. 28th. Finish'd 11.45 a. m., 28.
Trim'd by Screenings lbs.
JNO. HEGEMAN, *Inspector.*
Overtime, bushels.
Bags stowed.

304 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms in the city of New York, on Friday, the thirtieth day of November, in the year of our Lord one thousand eight hundred and seventy-seven.

Present, the honorable Samuel Blatchford, district judge.

SERGEANT J. QUICK, LIBELLANT, AND FREDERICK A. McKNIGHT, colibellant, *vs.* THE STEAMSHIP NEVADA, &C. } 26–155.

This case having been heard on the pleadings and proofs, and argued and submitted on briefs and points by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed, by the court, that the libellant and colibellant recover in this action against the said steamship Nevada, her tackle, &c., the damages by them sustained by reason of the collision in the libel set forth, with their respective costs to be taxed; and that it be referred to a commissioner of this court, to ascertain and compute the amount of such damages respectively, and report thereon to the court with all convenient speed.

(Signed) SAMUEL BLATCHFORD.

305 U. S. district court, before Geo. F. Betts, esq., commissioner.

SERGEANT J. QUICK ET AL. *vs.* THE STEAMSHIP NEVADA, HER ENGINES, &C.

NEW YORK, *December 10th*, 1877.

Appearances: For the libellants, Eugene H. Lewis, esq.; for the claimant, George C. Holt, esq.

Adjourned to December 11th, 1877, at 1 p. m.

NEW YORK, *December 11th*, 1877.

Hearing resumed.

GEORGE W. LOVELAND, a witness called on behalf of the libellants, being duly sworn, testifies:

By Mr. LEWIS:

Q. Where do you live?
A. Syracuse.
Q. What is your business?
A. Canal-boatman.
Q. How long have you been a boatman?
A. Since 1845.
Q. Were you a canal-boatman in 1871?

A. I was; yes, sir.
Q. Do you know Capt. Quick?
A. Yes, sir.
Q. Did you ever see his boat, the Kate Green?
306 A. Yes, sir.
Q. When?
A. I saw her in 1869, 1870, and 1871.
Q. When was the last time you saw her?
A. I saw her about two hours before she sunk.
Q. What was her condition at that time?
(Objected to. Question withdrawn.)
Q. Was she a good boat at that time?
(Objected to. Question withdrawn.)
Q. State what means you had of knowing the boat Kate Green.
A. I was with the boat in Buffalo; I was on the boat in Buffalo, and was there when she loaded; and towed the river with her, from Albany down here, at the time she met with this disaster; he towed the river alongside of me—what we call alongside of each other—and laid at the end of the Pier 6, at the time the tug took her away.
Q. Were you off and on the boat?
A. I was off and on the boat.
Q. During that time?
A. Yes, sir.
Q. How long a time did that extend over?
A. Coming down the river, two nights and two days; I was with him that length of time on the river; at Buffalo I was with him, perhaps, three days, when we lay in Buffalo together, previous to his loading.
Q. Have you owned canal-boats yourself?
A. Yes, sir; I have.
Q. Are you able to testify as to the condition of this boat?
(Objected to, on the ground that the witness is not shown to be competent; objection overruled; exception.)
307 A. Yes, sir.
Q. What was the condition of that boat, the last time you saw her?
(Same objection, ruling, and exception.)
A. To the best of my knowledge she was in good condition; she was what we call a good, second-class grain boat at that time; I had one of the same class, the same style of boat; I considered mine in good condition, and I considered her as good as mine.
Q. Describe the boat?
A. She is what we call a round bow, square-stern quarter-deck boat, styled so on the books.
Q. What distinction is there between what you call first-class and second-class boats?
A. A first-class boat is fully covered up—covered over and hatched down with hatches; let a boat be ever so good, if she is what we call a quarter-deck boat, she is not worthy to be first-class; she may be just as good as any first-class boat, but when she is what we call a canvas-back—canvas stretched over to cover the grain, or boards set edge-ways, she is second-class; she may be just as good as first-class; the boat may be just as strong and sea-worthy, but, on account of the roof, the insurance companies call her second-class.
Q. State what was this boat's condition as to her age.
(Objected to on the ground that the witness is not shown to be competent; objection overruled; exception.)

A. As to the age of the boat, in the condition she was at the time of the disaster, she was in good condition, a good, seaworthy boat; her age did not hurt her.

(Counsel for claimant moves to strike out the answer as irresponsive; motion denied; exception.)

308 Q. What was her appearance at that time with respect of age? Did she appear to be an old boat or a new boat?

(Objected to on the ground that the witness is not shown to be competent; objection overruled; exception.)

A. She did not appear to be an old boat; she appeared to be a good, staunch, second-class boat; that is as much as I can say; she was not old; there was no appearance of an old boat about her; there was nothing to show any wear and tear about her; she showed a good, new appearance, and was in good shape.

Q. What was the value of that boat as she stood at the time you saw her last?

(Same objection.)

Q. Were you familiar with the values of canal-boats in 1871?

A. I think I was; yes, sir; at that time I owned the one I was on, and one that I had a man running for me; the one I was on was just about such a boat as this.

By the COMMISSIONER: When did you buy your boat?

A. In 1869.

Q. Had you bought or sold any boats in 1871?

A. I sold one; yes, sir.

Q. When?

A. In the fall of 1871; a second-class boat.

(Counsel for claimant asks leave to cross-examine the witness as to his competency to speak as an expert.)

Cross-examination by Mr. HOLT:

How many boats did you ever buy?

309 A. I think the one I am on makes ten.

Q. During what period have those ten been purchased? When was the first and when was the last?

A. The first boat I bought was in 1855.

Q. When was the last?

A. The last one I bought was this last July; that is, the one I am on now at the present time.

Q. When was the last boat that you purchased before the 27th of September, 1871?

A. It was in June, 1869, I think, if my memory serves me right.

Q. When did you last sell a boat before September 27, 1871?

A. I don't remember just the day that I sold one; I think I sold one in the fall of 1869—either the fall of 1868 or 1869, I think, I sold a boat.

Q. Was it before or after the purchase of the boat that you have just testified to, in 1869?

A. I think it was afterwards.

Q. Are you positive about that?

A. I think it was; yes, sir; I think it was afterwards.

Q. Did you ever deal in canal-boats?

A. That has been my business; boating has been my business all my lifetime.

Q. Running a boat?

A. Yes, sir; changing boats and dealing in boats; buying and sell-

ing them; running them until I got a purchaser, and then selling them and buying another one.

Q. Do you mean to be understood as stating that it has been your business to deal in canal-boats, aside from buying one for your use, as a canal-boatman?

A. I have made it a business to buy one, and if I could get a profitable purchaser, to sell it and buy again; I never had one but what was in the market for sale.

Q. Do you mean anything else than if you needed a boat for your own use and purchased it if you could make a good sale you would sell it?

310 A. Yes, sir; this one that I have now is in the market.

Q. Did you ever have any agency or business in the nature of trading in canal-boats?

A. No, sir; I never was an agent in selling boats; I would make just as good a trade as I could.

Q. Have you any other basis of a knowledge of the values of boats than your purchasing and selling them in your business as a boatman?

A. I don't know that I have.

By the COMMISSIONER:

Q. You said you sold one in September, 1871?

A. Yes, sir; I think it was in September, 1871, that I disposed of one boat.

By Mr. HOLT:

Q. In September, 1871?

A. I think it was in September, 1871; it was either 1870 or 1871; I have got papers on the boat which would tell, but my memory does not serve me; it was either the fall of 1871 or 1870, and I could not swear positively which fall now, but I know it was one of those years.

Q. You have just testified, I understand you, that you did not sell any boat later than 1869 before this?

A. I bought one in 1869, and disposed of it in 1870 or 1871; that is what I am telling you; I don't know which year; I think it was 1871, because at that time I had two.

Direct examination resumed by Mr. LEWIS:

Q. I ask you now what you think the value of the Kate Green was the last time you saw her?

(Objected to on the ground that the witness is not shown to be competent.

Objection overruled; exception.)

311 A. Do you want me to state what I would give?

Q. No; what would be a fair market value; what she was worth in the market?

A. If she was to be sold what would be her value?

Q. Her fair market value at the time you saw her last, in September, 1871?

A. I saw her last in September; I should think she would be worth $3,200 as she lay the last time I saw her; I think I would be willing to give that for her.

Q. How was the business of boating in 1871 as compared with 1870?

(Objected to as immaterial.)

Q. How did the value of boats in 1871 compare with the value in 1870?

(Objected to as incompetent and immaterial.

Objection overruled; exception.)

A. Boat stock in 1871 was higher than it was in 1870.

Q. I will ask you what a new boat of the character and class of the Kate Green was worth in September, 1871?

(Objected to as incompetent and immaterial.

Objection sustained; but the commissioner states that the testimony may be allowed at a future stage of the case if it becomes important.)

Cross-examination by Mr. HOLT:

Q. You were not one of the crew on this boat coming down, were you?

A. No, sir.

Q. Had you ever seen her before you saw her at Buffalo, at the outset of that voyage?

312 A. Yes, sir.

Q. What boat were you connected with coming down?

A. At that time?

Q. Yes.

A. The W. W. Brown was the one that I was on at that time; I owned her.

Q. Did you come down together through the canal?

A. We did; yes, sir.

Q. Immediately together?

A. Not immediately together; right along within three hours of each other, so we both got the same tow down the river.

Q. When you were coming down the canal were there any boats between you two?

A. There were sometimes, and other times there would be none.

Q. Did you get on the Kate Green until you came to the river coming down?

A. No, sir; at Troy was the first I went on her after leaving Buffalo.

Q. And then the two boats, I understand you, were in the same tow?

A. Side by side down the river.

Q. How often were you on the Kate Green coming down the river?

A. Every day.

Q. Did you go down below the deck?

A. Yes, sir; I went into the midships, under her cover, on the corn.

Q. She was laden at that time, was she not, with cargo?

A. Yes, sir; laden with corn.

Q. You did not make any examination of the ship for the purpose of a possible purchase, or anything of that sort, did you?

A. No, sir; there is no chance to examine her when she is loaded.

313 Q. Did you make such an examination as you would make of a canal-boat if you purposed to buy it?

A. Not at that time; I did while I was in Buffalo, previous to her loading; I looked her over there.

Q. With a view to purchase?

A. Not directly with a view to purchase; but I was dealing in boats, and my attention was called to her.

Q. Who called your attention to her?

A. A man in Buffalo that was talking about buying a boat of that class and wanted my judgment; he called attention to her.

Q. Did he call your attention to this particular boat?

A. Yes, sir.

Q. Who was that man?

A. His name was Mr. Agean, from Syracuse, where I lived.

Q. Did I understand you that he asked you to examine this boat?

A. He did; yes, sir.

Q. Not a boat of that general character, but the Kate Green particularly?

A. That one, that boat in particular.

Q. Is he living still?

A. I couldn't say whether he is living or not. I have not seen him since 1875.

Q. Where did you last see him?

A. I saw him at home, in Syracuse.

Q. Did he then reside in Syracuse?

A. He did; yes, sir; he is a painter by trade now; he has quit boating.

Q. And, so far as you know, he resides there still?

A. Yes, sir.

Q. Do you know where his residence was?

A. I don't know where he made his quarters after he quit boating, only he was in the city.

Q. Do you know where his place of business is in Syracuse?

314 A. I guess he has not got any, only his paint-pot. I guess that is about all the business he has.

Q. You do not know whether he has any or not?

A. Any shop?

Q. Yes.

A. I don't think he has anything more than his house.

Q. You don't think he has; do you swear he has not; do you know anything about it?

A. I won't swear that he has not, and I won't swear that he has; I know he went at that business and that is all I know about it.

Q. In what respect did this boat show a good, new appearance?

A. I don't know as you will allow me to answer that question as I want to; I may take more words about it than you will let me take.

Q. Any facts that you saw which indicated that it was a new rather than an old boat, I would like to have you state.

A. As long as our boats show a good outside appearance, and there are no chuncks cut out of them here in this corner, and there are no pieces cut out there on that corner, and patched up, and no paint off, and everything looks nice and new like this desk, then they show a good outward appearance, and everything is all right. But if it is all chopped out in one place, and there is a bar gone off of that end, and a bustle knocked off of this end, then it don't show a good outside appearance. This boat did not show anything of that kind. She was all smooth and in good condition in regard to paint and all the like of that.

Q. All you can say is that as you looked at her you did not see anything to indicate whether she was a new or old boat?

A. There was no indication of an old boat about her yet. Everything looked good and staunch yet about her. She was straight; an old boat will hump up.

315 Q. Can't a boat become an old boat without having those marks that you described upon her?

A. No, sir; I don't think it can.

Q. It is necessary that portions of her should be knocked out in order to be an old boat?

A. The natural wear and tear of a boat will cause those marks to come on her.

Q. You are as positive that the natural wear and tear of a canal-boat will cause these marks that you have testified to as you are of anything you have stated here to-day? In other words, a canal-boat cannot be used and become an old boat without being battered in the the way you have described?

A. No, sir; they cannot. One boat meeting another one and slamming up against her will cause a mark to be given to her. In our trip from Troy to Buffalo we will meet, perhaps, 700 different boats. They don't pass smoothly by each other; they will naturally cut into one another, and it is wear and tear all the while.

LEMUEL J. AUSTIN, a witness called on behalf of the libellants, being duly sworn, testifies:

By Mr. LEWIS:

What is your business?

A. Canal-boatman.

Q. How long have you been in that business?

A. Ever since I was 10 years old.

Q. How long ago is that?

A. 20 years ago.

Q. Have you, during that time, boated on your own account?

A. I have.

Q. Have you owned boats yourself?

A. Yes, sir.

Q. When did you own your first boat?

A. I think it was in 1868.

Q. How many have you owned since then?

A. I never owned but one.

316 Q. Are you running that one still?

A. No, sir.

Q. Are you familiar with the values of canal-boats; do you keep so, I mean?

A. Yes; I see a good many boats sold.

Q. And a good many bought?

A. A good many bought. I have been with my father a good deal. He has bought and sold a good many boats.

Q. Do you know Captain Quick?

A. Yes, sir.

Q. Do you know his boat, the Kate Green?

A. I did, sir.

Q. Did you see her in September, 1871?

A. No, sir; I couldn't say as I saw her in September.

Q. When was the last time you saw her?

A. I am not prepared to say whether it was in September or October. I saw her in one of those months.

Q. In 1871?

A. Yes, sir.

Q. What kind of a boat was it?

A. She was a square-stern, round-bow, quarter-deck boat.

Q. Is that a class of boats that is well known among boatmen?

A. Yes, sir.

Q. Did she appear to be an old boat or a new one, the last time you saw her?

(Objected to on the ground that the witness is not shown to be competent.)

Q. Was this before she was sunk?

A. Yes, sir.

Q. Where did you see her?

A. I met her, I think it was between Utica and Frankfort. Those two places are nine or ten miles apart. I was boating up the canal that summer.

317 Q. Did you know Captain Quick then?

A. Yes, sir.

Q. Were you on his boat at that time?

A. No, I passed by. I was going up to Buffalo, and they were coming down.

Q. When had you seen her before that?

A. I could not tell you the date, but I was boating all that summer, and I used to see her most every trip as she passed backwards and forwards.

Q. I will ask you, from her general appearence, do you think she was a new or an old boat?

(Objected to, on the ground that the witness is not shown to be competent.

Objection overruled; exception.)

A. She appeared to be a pretty good boat, in good condition when I saw her.

Q. That was not the question. The question is whether she appeared to be a new boat or an old one.

(Same objection, ruling, and exception.)

A. She had more the appearance of a new one than she did of an old one. I can tell the year she was built.

Q. And where she was built?

A. Yes, sir.

Q. Will you state?

A. I could not tell you the exact spot; she came from Caughdenoy; I think it was in 1867.

Q. I will ask you what you consider the value of that boat to have been in September or October, 1871, the last time you saw her?

(Same objection; objection sustained, on the ground that sufficient foundation has not been laid.)

318 The WITNESS. I was on the boat once in Oswego.

Q. Did you go through the boat at that time?

A. Yes, sir.

Q. In the summer of 1871?

A. Yes, sir.

Q. Do you remember her condition at that time?

A. Yes, sir; she was a kind of a boat that don't rot very quick, because she is what we call a solid side boat; she was not a frame boat. Some boats have timbers like a ship and planks down, but this was a solid side boat, bolted through.

Q. With bolts running up and down?

A. Yes, sir; probably her sides, as they built them at that time, were from five to six inches thick.

Q. Was this one so?

A. Yes, sir; I think she was.

Q. I will ask you what you considered her value to be at that time, when you saw her at Oswego?

(Objected to.)

Cross-examination by Mr. HOLT:

Q. What did you look through the boat at Oswego for?

A. It is natural for one boatman——

Q. One moment; I don't care what was natural to do. Why did you look over the boat?

A. I was asked to go down into the boat.

Q. Was it for the purpose of purchase or sale?

A. No, sir.

Q. Did you examine then to see how thick her sides were?

A. No, sir.

Q. Who asked you on the boat to go down?

A. I couldn't tell you the man's name; it was a man that was at work on the boat.

Q. Did he state why he wanted you to go down into the boat?

319 A. He wanted me to go down and look at her, and see what kind of a boat she was.

Q. Did he state why he wanted you to see what kind of a boat she was?

A. No, he did not.

Q. What was he doing on the boat?

A. I couldn't tell you whether he was a driver or a steersman; I think he was a steersman, though.

By the COMMISSIONER:

Q. Had she a cargo then?

A. No, sir; she was empty.

By Mr. HOLT:

Q. Where were you when he asked you?

A. I stood on the deck of the boat.

Q. And he came and asked you to go down and see what kind of a boat she was?

A. He was down in the midships, and he asked me to come down.

Q. At that time, did he ask you to come down for the purpose of seeing what kind of a boat she was?

A. Yes, sir; that was his object.

Q. Did he say so?

A. Yes, sir.

Q. What did you do when you got down there?

A. I looked around the boat.

Q. Have you explained fully the reason of his asking you to come down there, so far as you know it?

A. It was just to see what kind of a boat she was.

Q. Do you mean, to see how it was arranged below, or whether it was a good or bad boat. What did you understand to be the object of your invitation down there?

A. He wanted me to see how the boat was fastened; we were talking about boats, and the object was to see whether she was a good or poor boat, I suppose. It is natural for one boatman to ask another to go down and look at his boat.

320 Q. It is natural for one boatman to ask another to go down below and look at his boat to see whether it is a good one or not?

A. Yes, sir; it is a very common occurrence.

Direct examination resumed by Mr. LEWIS:

Q. I will ask you what you considered her value to be at that time, when you saw her at Oswego?

(Objected to, on the ground that the witness is not shown to be competent.

Objection overruled; exception.)

A. I should judge the boat was worth $3,000 to $3,500.

Q. I will ask you how long a canal-boat of that class can be run on a canal?

(Same objection, ruling, and exception.)

A. From 8 to 10 or 12 years.

Cross-examination by Mr. HOLT:

Q. Are you connected with a boat now?

A. Yes, sir.

Q. What is the boat?

A. The John McElhone.

Q. Where is she?

A. She lies at Pier 51, North River.

Q. When were you first spoken to about testifying here?

A. When I was subpœnaed yesterday.

SERGEANT J. QUICK, the libellant, being duly sworn, testified as follows:

By Mr. LEWIS:

Q. Are you one of the libellants in this case?

321. A. Yes, sir.

Q. Were you the owner of the canal-boat Kate Green?

A. Yes, sir; I was.

Q. The boat that sank in September, 1871?

A. Yes, sir.

Q. How long had you owned that boat?

A. One year and a few days; I bought her in 1870, the 10th of September, I think, and owned her up to the 27th day of September, 1871.

Q. Do you know how old she was when you bought her?

A. About three years, somewhere near that.

By Mr. HOLT:

Q. Do you know how old she was?

A. Yes, sir; she was built in 1867; I bought her in 1870, the 10th of September.

By Mr. LEWIS:

Q. What day was she sunk?

A. The 27th day of September, 1871.

Q. By collision?

A. By a collision with the steamship Nevada.

Q. Whereabouts?

A. Pier 46, between 46 and 47, North River.

Q. How soon after she was struck did she sink?

A. In 20 or 30 minutes; she went down in 18 feet of water.

Q. When was she raised?

A. She was sunk on Wednesday, the 27th, and she was raised a week from the next Saturday; I think that was the time we got her out above water.

Q. That would make from eight to ten days?

A. Yes, sir.

Q. Was she loaded at the time?

A. She was loaded with corn; 8,000 and some odd bushels of corn.

Q. Did the cargo come up with the boat when she was raised?

322 A. A small portion came up; the bottom being off, she emptied the cargo into the river; there was a little under the bow and stern of the cabin after we got her over to Governor's Island.

Q. They removed her from the slip over to Governor's Island?

A. Yes, sir; the wreckers took her over there on a pontoon, and left her on Governor's Island, on the Brooklyn side.

Q. You say there was a small portion of the cargo came up when the boat was raised?

A. Yes, sir; I think three or four hundred bushels of corn remained under the cabin, where the bottom was not torn off by the screw of the Nevada.

Q. Was that corn damaged?

A. Yes, sir; it lay under water.

Q. How many days?

A. Ten or twelve days; all this time she was raising and getting her over there.

Q. Had you been paid your freight for carrying the cargo?

A. No, sir; not fully.

Q. How much was due you on the freight?

A. In the neighborhood of one hundred dollars, I believe; something like that.

Q. What amount can you safely say was due you?

A. I think about $65; I think I had $35 of Mr. James after I arrived here.

Q. You say about $65 was unpaid?

A. About that, more or less.

Q. I don't want "more or less;" I want you to swear safely that a certain amount was due.

A. $65; I think I had $35 out of the $100 that was due.

Q. You didn't have any more than $35 out of the one hundred?

A. No, sir; to the best of my knowledge, I did not.

323 (Counsel for libellants offers in evidence, from the testimony of this witness, taken June 19, 1877, in this cause, so much as relates to the nature and extent of the damages done to the boat Kate Green by the collision, and her condition afterwards.)

Q. Are you sure you purchased your boat in 1870?

A. Yes, sir.

Q. And you owned her one year before she sank?

A. Yes, sir; a little more.

Q. Had you put any repairs upon her during that year?

A. Yes, sir; I had.

Q. What time in the year?

A. In 1871.

Q. In the spring?

A. In the spring of 1871 I built an addition to the cabin, called a caboose, a cabin for hands, berths, and so on, for them to sleep in.

Q. Anything else?

A. Painting and repairing, all new.

Q. Those repairs were necessary, were they?

A. Yes, sir; they were supposed to be for the good of the boat, for the purpose of keeping the boat in good condition.

Q. They added to her value?

A. Yes, sir; certainly; you cannot keep up a boat properly without painting and keeping her in order, and taking good care of her; that makes a boat last.

Q. What amount did you so expend in repairs?

(Objected to as incompetent and immaterial; objection overruled; exception.)

A. I think it was about $130; near that; I did not keep any correct time of my own work; I am a carpenter and joiner by trade, and do my own work; I bought the material, and did the work as cheap
324 as I possibly could; I think I have bills for about $120 or $130.

Q. At any other time during the year, did you put any repairs upon the boat?

A. Yes, sir.

Q. When next?

A. That was the last of August, $164.

Q. She sank in September; that was just prior to her sinking?

A. Just that trip down; I had the repairs done in Buffalo, and I loaded and came right down here; I started from there on the 6th of September, I think.

Q. What was the amount?

A. $164; I have bills there to show, from the dock in Buffalo.

Q. How long have you been a boatman?

A. Since 1843.

Q. Have you owned a number of boats during that time?

A. Yes, sir; I have, quite a number.

Q. How many do you suppose?

A. Some ten or twelve boats.

Q. What boat did you own before the Kate Green? Did you own any other boat up to the time you bought the Kate Green?

A. About two years before I owned the Ann White, at Niagara, called the Canada Scow, a new boat.

Q. You knew, in 1871, the values of canal-boats, did you?

A. I think I did; yes, sir.

Q. How did you know their value?

A. By freight.

Q. I mean, how did you become familiar with the values of boats?

A. By experience, knowing the worth and the good of an old boat and a new one.

Q. Did you consider yourself a good judge of canal-boats?

325 (Objected to; objection overruled; exception.)

A. I considered myself familiar with the market value, or I would not have purchased so high a price boat as I did; I considered it was a good fair bargain.

Q. How did the values of boats in 1871 compare with those in 1870?

(Objected to, on the ground that the witness is not shown to be competent; objection overruled; exception.)

A. The values were better in 1871 than they were in 1870.

Q. You mean higher?

A. Yes, sir.

Q. What do you consider the value of the Kate Green to have been at the time she sank; without any reference to her value at any time before, or what her value would be afterwards, but at the time she sank, her market value?

(Same objection, ruling, and exception.)

A. I considered her market price $3,500.

Q. Do you mean the market value by market price?

A. Yes, sir; what she was worth in 1871.

Q. How long can a canal-boat of her class be run on a canal; how long are they fit to run?

(Same objection, ruling, and exception.)

A. You mean the class of grain-boats?

Q. Yes.

A. They are used commonly, after grain, a great while for lumber, and so on; but up to the age of 12 or 15 years, as grain-boats.

By the COMMISSIONER: Then they can be used as lumber-boats after that?

326 A. Yes, sir; to the age of 18 or 20 years. I know of boats here in the city lightering grain now, at the age of 15 and 18 years, good, safe boats.

By Mr. LEWIS: This boat was raised in what way after she sank?

A. She was raised by a wrecking crew, with a pontoon; getting chains under her bottom, and raising her up with a pontoon and jack-screws, and so on, to get her above water.

Q. Did you lose anything on the boat at the time she was sunk?

A. Yes, sir; a stove, a table, and some furniture in the cabin; and I lost the whole of my furniture; the new stove was worth $22.

Q. I don't understand you; you say you lost all of your furniture?

A. Yes, sir; I lost all my furniture in storage, not being able to redeem it; but in the wreck I lost my stove and table; the stove was new that spring, and cost $22.

Q. What was the value of that property that was lost?

A. I had a new oil-cloth on the floor that cost about seven dollars, and the stove cost $22, and the table three dollars; there was some bedding, and so on, in the small caboose that we could not get; they went down too quick for us.

Q. What was that worth?

A. Three of four dollars probably.

Q. And that belonged to you, too, did it?

A. Yes, sir; what I lost on the boat would amount to $33 or $35 in all.

Cross-examination by Mr. HOLT:

How do you know that this boat was built in 1867?

A. It was built within about a half mile of my place, where I lived.

Q. Did you see her building?

327 A. I did; I could see them daily; she was built on Oneida River, on one side, and I lived on the other, just above.

Q. Did you actually see the boat as it was being constructed?

A. Yes, sir; I was in sight of the boat when building.

Q. Who did you purchase her of?

A. Green & Warring.

Q. Where do they live?

A. Caughdenoy.

Q. Were there any incumbrances on the boat while you owned her?

(Objected to; objection sustained; exception.)

Q. Was there not a chattel mortgage upon the boat at the time she was lost?

(Same objection, ruling, and exception.)

Q. Who is Thomas Quick?

A. He was a brother of mine.

Q. Was he not a part owner in this vessel at the time that she sunk?

(Objected to; objection overruled; exception.)

A. He was a partner; yes, sir.

By the COMMISSIONER: Was he a part owner of the vessel at the time she sunk?

A. No, sir; nothing to do with it at the time of sinking; but when I purchased it he was a part owner; he had no claim whatever when she sank; no interest whatever.

By Mr. HOLT: He transferred his interest to you before the vessel sank?

(Same objection, ruling, and exception.)

A. Yes, sir; in the fall of 1870.

Q. Was any record of such transfer made in any public office?

(Objected to as immaterial; objection overruled; exception.)

328 A. I don't understand the question.

Q. Was there any record filed in any public office of the transfer from your brother to yourself?

(Same objection, ruling, and exception.)

A. I have an assignment from my brother.

Q. That is not an answer to the question; do you know whether there is any record filed anywhere?

A. There is nothing filed that I could swear to.

Q. Who built the boat?

A. Green & Warring were the builders, I believe.

Q. At this town of Caughdenoy?

A. Yes, sir.

Q. Was there any survey made of this boat after she was raised?

A. A survey?

Q. Do you know the meaning of the term "survey" upon a vessel that has been sunk?

A. Mr. Duer went with me and took a survey.

Q. That is not what I refer to; do you know the meaning of the term in regard to a vessel of "a survey" being made?

A. I cannot say that I do.

Q. Don't you know that it is the custom after a vessel has been sunk or wrecked to have certain proceedings taken, to ascertain the valvue, by outside parties; did you ever hear of such proceedings as those?

A. I might have heard of such proceedings.

Q. Were any such proceedings taken in this case?

(Objected to; objection overruled; exception.)

A. Proceedings or survey made?

Q. Don't you know that the insurance companies and owners, and parties interested, select disinterested third parties often to make an examination and an appraisement of the value of the vessel?

A. I don't know what they have done; I was not insured.

329 Q. Do you know of any such transaction having taken place in this case, after the canal-boat was raised?

A. I didn't know of the insurance companies making any survey.

Q. Did you know of anybody?

A. Yes, sir.

Q. You mean that Captain Duer went and looked at it, don't you?

A. Yes, sir; he went and looked at it.

Q. Was there any examination made by appraisers, or by third parties, for the purpose of ascertaining the value of this vessel, so far as you know?

A. Yes, sir.

Q. Who were they?

A. A man that I thought was a good, competent judge whether it was worth anything for repairing or rebuilding.

Q. Who was he?
A. John McCarthy.
Q. You asked him to make an examination?
A. Yes, sir.
Q. Did any of the other parties in interest know about his making this examination?
A. Yes, sir.
Q. Did Williams & Guion know about it?
A. Yes, sir; I think they did.
Q. What makes you think so?
A. From my talking with them to see whether she was worth rebuilding or not.
Q. Which one did you talk with?
A. I talked with Mr. Williams.
Q. He is dead now, is he not?
A. Yes, sir, he is; a gentleman he was, too.
Q. Who were the persons that raised the boat?
A. Mr. John Baxter & Co., I believe.
Q. They are engaged in that business, are they not?
A. They were at that time; I presume they are now.
Q. Who employed them to raise it?
330 A. I didn't employ them. I know they came there with a pontoon; that is the first I knew of it.
Q. You don't know who did have them come there?
A. I could not swear who did; no, sir; they came there with their pontoon, and I didn't employ them.
Q. Who did you suppose employed them?
A. I suppose that some one did who had an interest in it. I was not much used to the port of New York then.
A. The insurance company got them, didn't they; or was it the owners of the grain, or who was it that got them to get this vessel up, so far as you know?
A. I could not swear who it was. I presume it was the insurance company; I could not swear.
Q. Was any attempt made to save any of the corn when she was first raised, and before she reached Governor's Island?
A. No attempt to save any grain; we had no time to make any attempt.
Q. But after she was first raised up by the company, was she taken right across to Governor's Island?
A. Yes, sir; she was taken right across as soon as they got way up; I think Saturday night; and there was no grain to be found in the bottom at all.
Q. What became of the boat?
A. She was left on Governor's Island.
Q. Is that the last time you ever saw her?
A. Yes, sir; what was left there, a total wreck, considered worthless by me, and other parties that saw her.
Q. You never got anything for whatever was left of the boat?
A. I never received a penny from any such source.
Q. Who made these repairs in Buffalo immediately before you came down, early in September?
A. Mr. Haight.
Q. What is his first name?
A. I could not say. I have a paper to show his name.
331 Q. Where does he do business?

A. In Buffalo; a dry-dock, right side of the Erie Canal.

Q. State the name of the boat which you know of, 18 years old, which is considered a good boat?

A. I don't know as I could of 18; I could of 15.

Q. You testified that you knew of boats from 15 to 18 years old; do you mean by that 15?

A. I mean 15. I think there are those, but I could not say positively; but I know of one fifteen.

Q. Can you state the name of one that is 15 years old that is considered a good boat for the purpose of carrying grain?

A. The John McElhone.

Q. Do you know of any other?

A. I could not say that I do know of any other at the present time.

Q. Do you know personally yourself how many bushels of grain were in that boat?

A. In what boat?

Q. In the Kate Green?

A. At the time before she sank?

Q. Yes; you said she had 8,000 and odd bushels?

A. Eight thousand and 100, I think, or 500.

Q. Have you taken those figures from the bill of lading, or something, or do you know yourself how much was in the boat? Did you have anything to do with keeping a count when she was loaded?

A. Yes, sir; I kept tally on my cargo, and have a shipping-bill to show.

Q. Do you wish to be understood as swearing that you counted the number of bushels of grain in the boat yourself?

A. Tally it on?

Q. Yes.

A. Yes, sir; it is the captain's business always.

By Mr. LEWIS:

Q. Were you present when she was loaded?

A. I was; yes, sir.

By Mr. HOLT:

332 Q. How many times was this boat repaired while you owned her?

A. She was on the dock but that once, I think, while I owned her. I don't remember of ever having her on the dock before. When those first repairs, painting and the cabin put on, that was in the spring before we started, and she was not on the dock. The painting and building the cabin and doing whatever was needed was done without going on *on* the dock.

By the COMMISSIONER:

Q. What did you give for this vessel?

(Objected to by counsel for libellants; objection overruled; exception.)

A. $3,200.

Redirect examination by Mr. LEWIS:

Q. You began to say something of a survey of the boat, as she lay on Governor's Island, by a man of the name of Duer; who was Capt. Duer?

A. He was agent, I think, at Pier 46; Williams & Guion's agent.

Q. What sort of an agent?

A. Agent of the pier—the dock up there; the steamship company's agent. They referred me to him.

Q. Did you visit Governor's Island with him?

A. Yes, sir; I did.

Q. Did you see the boat?

A. Yes, sir.

Q. He going on behalf of Williams & Guion?

A. Yes, sir.

Q. On behalf of the steamship company?

A. Yes, sir.

333 Q. What was your object in visiting the boat there with him?

A. At their request, to see whether she was worth rebuilding or not.

(Counsel for claimant objects to the inquiry as to the object of visiting the boat.)

Counsel for libellants offers in evidence the following extracts from the deposition of John R. Duer, taken in this cause, on the direct examination by Mr. Nash:

"Q. You were in the employment of the Williams & Guion line in September, 1871?

"A. Yes, sir.

"Q. In what capacity?

"A. Marine superintendent.

"Q. How long have you been in their employment?

"A. I have been in their employment twenty-five years and over.

* * * * * * *

"Q. He says that you said, when you went down to Governor's Island, that you considered the boat a total wreck; what did you say of that character to Quick?

"A. I don't remember what I said.

"Q. How did you come to go over there?

"A. I think I was invited to go by Capt. Cook.

"Q. It was a mere friendly act to accommodate him?

"A. It appeared so at the time.

"Q. Did you tell anybody you were going? Did you tell Williams & Guion that you were going there?

"A. I believe I did.

"Q. Didn't you go there in accordance with the suggestions from them that you should go over and look at the boat?

334 "A. It may be; I don't remember.

"Q. Was not that a fact, that you went over to look and see what amount of damage had been done to the boat?

"A. If I could find it; yes, sir."

Q. What conversation took place between you and Captain Duer in reference to the condition of the boat?

A. He said he considered her a total wreck, and didn't wish to have anything to do with her; did not consider her worth rebuilding; he would rather buy me another one as good, or pay me for her, rather than to have anything to do with her; he thought her a total wreck.

Recross-examination by Mr. HOLT:

Q. Is that all that he said?

A. That was the foundation; yes, sir, I think that was about all.

Q. Didn't he add, if they were liable?

A. Providing they were at fault he would rather buy me another

one as good, or pay for her, rather than to have anything to do with her; he considered her a total wreck.

Q. Who did you give $3,200 to for this boat?

A. I bought the boat of Green & Warring.

By the COMMISSIONER:

Q. Have you paid them the $3,200?

A. Not the whole of it.

By Mr. HOLT:

Q. Have you paid any portion of the $3,200 to *to* anybody?

(Objected to; objection overruled; exception.)

A. Yes, sir.

Q. How much?

(Same objection, ruling, and exception.)

335 A. I don't recollect exactly how much.

Q. State, to the best of your recollection, the amount that you have paid on account of the purchase of this boat.

(Same objection, ruling, and exception.)

A. $1,250 or $1,350; I could not swear positively which.

Q. That you paid in cash?

(Same ruling, objection, and exception.)

A. I paid them. It was satisfactory to them. It was not in traffic.

Q. What was it in?

(Same objection, ruling, and exception.)

A. One credit of a team of horses, and the balance in cash.

Q. Did you give them the pair of horses?

(Same objection, ruling, and exception.)

A. Yes, sir; I let them have a pair of horses.

Q. That you had owned?

(Same objection, ruling, and exception.)

A. I sold them a pair of horses.

Q. For how much?

(Same objection, ruling, and exception.)

A. $300.

Q. And the balance you paid them in cash?

(Same objection, ruling, and exception.)

336 A. Paid them in money.

Q. Was that by check or by bills; how was the payment made?

(Same objection, ruling, and exception.)

A. By monthly installments of $100 each.

Q. In money or checks?

(Same objection, ruling, and exception.)

A. They were forwarded on to the Phœnix Bank, the money paid at Buffalo, and forwarded by check, I suppose, with Mr. A. T. Anthony & Co.

Q. Who were these payments made to?

(Same objection, ruling, and exception.)

A. Messrs. Wells, Green & Warring. I think they were Green & Warring jointly; I don't know but they were Mr. Green alone.

Q. Have you those notes?

(Same objection, ruling, and exception.)

A. I have; yes, sir.

Q. Have you them here?

(Same objection, ruling, and exception.)

A. Some of them; I haven't them all here.

Q. I would like to have you produce them.
(Same objection, ruling, and exception.)
The witness produces the notes.
Q. In cases where the signatures have been torn off from some of these notes were they originally signed by Thomas Quick and yourself, as in the case of this in which no signatures have been torn off?
(Same objection, ruling, and exception.)
337 A. They were all by Thomas Quick and myself; that is, some of them *there*.
Q. All the notes dated September 30th were given by Thomas Quick and yourself?
(Same objection, ruling, and exception.)
A. Yes, sir.
Q. This note of $313 was given on account of your payment for the boat?
(Same objection, ruling, and exception.)
A. Yes, sir; there was a note and $160 in money, making $400 paid, and the balance was $2,800.
The note for $313 is offered in evidence on behalf of the claimants.
(Objected to; objection overruled; exception. Marked Exhibit No. 1, Dec. 11, 1877.)
Q. That note was paid to them?
(Same objection, ruling, and exception.)
A. Yes, sir; I paid it.
Q. How much have you paid on these notes?
(Same objection, ruling, and exception.)
A. $1,200 or $1,300. There is one or two that they hold that I did not give. Here is a receipt of Mr. Warring of $50.
Q. What security have the persons who sold this boat to you for the balance of the amount due?
(Same objection, ruling, and exception.)
A. They have no security.
Q. Did they never have?
(Same objection, ruling, and exception.)
338 A. I paid them $400 down, and, considering the sale good, I paid them $100 per month until the boat was paid for.
By the COMMISSIONER: She has been paid for, has she? Were the notes secured in any way?
(Same objection, ruling, and exception.)
A. The notes were secured by mortgage.
By Mr. HOLT: Did you give notes for the whole amount of it?
(Same objection, ruling, and exception.)
A. I gave notes to the amount of $100 a month.
Q. Notes for the $3,200?
(Same objection, ruling, and exception.)
A. No; I paid $400 down; that left $2,800.
Q. What papers passed between you in respect to that $2,800? You gave him these notes which you have produced, and which you have paid?
(Same objection, ruling, and exception.)
A. Yes, sir.
Q. What else passed?
(Same objection, ruling, and exception.)
A. I gave him a mortgage.
Q. Did you give him notes for the other amount?
(Same objection, ruling, and exception.)

A. There were 28 notes given of $100 each.

Q. Those that you do not produce have never been paid. Is that correct?

(Objected to as immaterial; objection sustained.)

339 By the COMMISSIONER: Those 28 notes were secured by a mortgage, were they?

(Same objection, ruling, and exception.)

A. Yes, sir.

By Mr. HOLT: Where was that mortgage filed, if at all?

(Same objection, ruling, and exception.)

A. I don't know whether they filed it or not.

Q. Have any proceedings ever been taken upon that mortgage, that you know of?

(Objected to; objection sustained.)

Q. Who did you give this mortgage to?

(Objected to; objection overruled; exception.)

A. To Mr. Warring.

Q. Do you know where they live now?

A. I know where Mr. Green lives; I think I know where Warring lives. I think his home is in Fulton, Oswego County; I think he rents a place there. I don't know whether he lives on his boat or not. I think he has a temporary home in Fulton.

Q. Where is Mr. Green?

A. Mr. Green lives at Caughdenoy, Oswego County.

Q. Were those the notes that ran clear down to the date of the loss of this boat?

(Objected to; objection overruled; exception.)

A. I have the note here of 1871—September.

Q. You paid these notes until this boat was sunk. Is that the idea?

(Same objection, ruling, and exception.)

340 A. Yes, sir; and $50 ahead. I have a receipt here of $50 that I paid Warring.

Q. Have you ever been released in any way from liability for the rest of these notes?

(Objected to; objection sustained; exception.)

Q. Have you ever been discharged in bankruptcy or by proceedings in insolvency under the State act, or has the claim against you upon these notes ever been released?

(Objected to; objection sustained; exception.)

his
SERGEANT J. + QUICK.
mark.

DECEMBER 11TH, 1877.

AMASA T. KINGMAN, a witness called on behalf of the libellant, being duly sworn, testifies:

By Mr. LEWIS:

Q. Were you the agent of the Western Insurance Co. in September, 1871?

A. Yes, sir.

Q. The New York agent?

A. I was acting for them for the marine department of their business here in New York. I had nothing to do with their fire business.

Q. Do you recollect the sinking of the canal-boat called Kate Green, September 27th, 1871?

A. Yes, sir.

Q. Was her cargo insured by the Western Insurance Co.?

A. Yes, sir.

Q. Did you have anything to do with the raising of the boat?

341 A. I acted for the company in regard to raising it.

Q. Who did you employ?

A. Baxter & Company.

Q. Were you present off and on during the raising of the boat?

A. Yes, sir; I was up there a number of times, before they got her up and afterwards.

Q. Your company had not insured the boat?

A. If I remember right, the company had insured the boat, but the policy had expired, and it was not renewed.

Q. Your interest was not in the boat?

A. No, sir; it was in the cargo.

Q. There had been an abandonment to the company of the cargo by the consignee?

A. I did not know.

Q. You were interested in saving for the company as much of the cargo as you could?

A. Yes, sir.

Q. Did you succeed in saving any of it?

A. Not to amount to anything; I don't remember exactly how much, but I think it was somewhere in the neighborhood of a couple of hundred bushels taken out of the boat after it was on the flats at Governor's Island; it had been lying there 8 or 10 or 12 days. I don't think there was $50, or over that, of value saved. I was aboard the boat after they towed her around on the flats at Governor's Island, and there was nothing in her.

Q. You think there may have been 200 bushels came up with the boat?

A. Yes, sir; around under her cabin floors—not to amount to anything.

Q. Was it in a damaged condition?

A. Yes, sir.

Q. How badly damaged?

A. About as bad as could be, except fer feeding hogs.

Q. What was the value of it per bushel?

342 A. I have sold thousands of bushels of that stuff; I suppose it was worth at the time for feed 20 cents a bushel; it would depend where it was, and how much trouble it was to get it off; there was very little value to it; it had been under water then, I think, about a week, when it was towed down to Governor's Island—9 or 10 days.

Q. Do you recollect who the consignee was?

A. It was Brown; I don't know whether it was a firm or not.

Q. Did you pay the loss on the cargo?

A. I made a draft on the Western Insurance Co. for the loss and gave the parties the draft.

Q. Look at the receipt now shown you and state whether that is the bill that was rendered to the company for the amount of the cargo that was lost, and whether that was the amount paid by the company?

A. I think it was.

Q. That was the receipt you took from the consignee for the payment?

A. I think that is the one; it was the amount of the draft I made upon the company.

Libellant's counsel offers receipt in evidence, marked Ex. No. 2.

Cross-examination by Mr. HOLT:

Q. You say you received this receipt?

A. To the best of my recollection, that is the bill. I made a draft for that amount in payment.

Q. And the payment was not made by you; you drew on the company?

A. Yes, sir; and the draft was paid; I know the officers of the company said so afterwards. I didn't see the payment of this draft; I merely gave this party a draft, and I presume that was the bill.

Q. This receipt was not given to you by Mr. Brown, was it?

343 A. I think he gave me that receipt; a draft is supposed to be the same as cash; I would not swear that I took that receipt from Mr. Brown for the company, but I presume I did.

Q. Did you take this in point of fact?

A. I would not swear that I took it.

Q. Where did you find it; was it in your possession?

A. I think it was in the company's possession. The company had that receipt in its possession, but whether I forwarded it to the company or whether it was sent to them by Mr. Brown I don't remember. This was paid to the assured as a total loss. There was no deduction for salvage at all. We were satisfied before we settled the loss that Mr. Brown was the owner of the property.

Redirect by Mr. LEWIS:

Q. Do you know anything about the market value of corn on that day?

A. I do not.

Q. On what basis did you pay the loss?

A. At the market value on the day of the disaster.

Q. The market value at New York?

A. Yes, sir.

(Objected to.)

The WITNESS. That is the rule of all companies.

Q. Is the market value capable of absolute ascertainment?

A. Yes, sir.

Q. There is no difficulty about that?

A. No, sir; you can go to the Produce Exchange and get the market value; it is a matter of record; you can find out to-day what the market value was on that day.

Q. If you don't recollect anything about the market value, can you say that from having paid that loss at that rate, that that was the market value of the corn that day?

344 A. I say I could not tell the market value, but I presume we did not pay them more than the market value. We agreed upon the market value for that day, and settled on that basis.

Q. Did you give a draft on the company at Buffalo?

A. Yes, sir; at Buffalo.

Q. And took this receipt and forwarded it to the company?

A. I don't remember whether I took that receipt myself and forwarded it, or whether it was forwarded to the company by Mr. Brown, but I should think that I did take that myself and forward it to the company; that is the usual way of doing it, but in this particular case I don't remember.

Q. When were you notified of the collision?
A. I don't know by whom or how soon after, but I presume on that day or at the next morning. I think this occurred in the afternoon.
Q. Do you recollect by what interest—the boat or the cargo?
A. I do not.
Q. You stepped in and employed Baxter to raise the boat?
A. Yes, sir; I gave him instructions to go on and raise it.
Q. And he was so employed?
A. Yes, sir.
Q. For how long?
A. I think he was at work in the neighborhood of a week; I don't remember exactly the number of days from the time he commenced until he towed it to Governor's Island.
Signature to deposition waived.

NEW YORK, *Dec.* 17, 1877.

JAMES HENRY BACON, a witness called on behalf of the claimant, being duly sworn, testifies:

345 By Mr. HOLT:

Q. Where do you live?
A. Buffalo, New York.
Q. What is your business?
A. My business has been a boat-builder, and shipwright, as you might call it.
Q. How long?
A. Since 1853.
Q. What kind of boats?
A. Canal-boats, generally.
Q. What is your business at present?
A. I have been employed in 1877 by the insurance companies at classing boats and barges.
Q. Are there books kept and published by the insurance companies containing classifications of canal-boats in this State?
A. Yes, sir.
Q. And it is your business now, as I understand, in behalf of these insurance companies, to make up such books?
A. It was.
Q. What is the book which I now show you (handing witness a book)?
A. That is what is called a canal registry, for the classification of canal-boats.
Q. For what year?
A. This is for 1871.
Counsel for claimant offers in evidence, from the book referred to, an entry in regard to the boat Green.
(Objected to as incompetent.)

Cross-examination by Mr. LEWIS:

Q. Did you make that book?
A. No, sir.
Q. Did you make the investigations or the examinations upon which it was made?
A. No, sir.
346 Q. Do you know who did make it?
A. This book?
Q. Yes.

A. I know by the names that are signed on it.

Q. Do you know who made the examination of the boat, resulting in that classification?

A. I could not state under oath. To the best of my opinion I know who did it.

Q. Did you see them do it?

A. No, sir.

Counsel for claimant renews the offer of the entry, for the purpose of contradicting the testimony of one of the witnesses called on behalf of the libellants.

The commissioner excludes the entry in the book, on the ground that it is a private book and not gotten up by public authority.

(Exception by claimant.)

Direct examination resumed by Mr. HOLT:

Q. How many classes are there of canal-boats in this book?

A. Five, I think; first, second, third, fourth, and lumber.

Q. What is a boat of the first class and of the second class and of the third and of the fourth class?

A. The fourth-class boats are for carrying rough freight. A third-class boat carries corn and oats. First and second class boats carry rye, wheat, and barley, and tea, sugar, and coffee, and all such merchandise.

Q. Which are the more valuable of these classes?

A. The first class is the most valuable.

Q. And the second class next?

A. Yes, sir; and the third class next.

347 Q. What does "$\frac{1}{4}$ D" mean here in this register?

A. $\frac{1}{4}$ deck; that means a quarter-deck boat.

Q. What does that mean (referring to an entry)?

A. That she is open part of the middle to the side deck, on each side, probably two feet or two and a half wide.

Q. What does "M" mean?

A. That means maphrodite.

Q. What does maphrodite mean, as applied to a boat?

A. It is not either a lake-boat or a scow. It has a scow stern and round bow.

Q. What is a lake-boat?

A. A lake-boat is what we call a round stern or transom stern, with a full deck.

Q. What is a maphrodite lake?

A. A scow stern and round bow.

Q. Were you in the business of making and repairing canal-boats continually from 1853 to 1877?

A. I went to serve my time in May, 1853. I commenced then as a boy, to go to work in the business.

Q. Did you continue in the business?

A. I have up to to-day, less the time that I was working for the insurance companies.

Q. Have you purchased and sold canal-boats in the course of that time?

A. No, I have not been selling them; my brother does the selling; I used always to attend to the outer work.

Q. Were you in the firm?

A. Yes, sir.

Q. Were you familiar with the value of canal-boats in 1871?

A. Yes, sir.

Q. I will ask you what, in your opinion, would be the value of a quarter-deck, maphrodite lake-boat—quarter-deck, round bow, square stern canal-boat—built in the year 1867, ranked upon the register as third-class, in ordinary order, in September, 1871?

348 (Objected to; objection overruled; exception.)

A. I should think about $1,800 or $2,000; somewhere about that neighborhood.

Q. How much does the value of an ordinary canal-boat deteriorate in each year after it is new, in your opinion?

(Objected to as immaterial.

Objection overruled; exception.)

A. Do you mean what the wear and tear would be?

Q. How much would the value go down, as it grows older?

A. About $300, I should think, each year.

Q. From the time she is built, do you mean?

A. Yes, sir.

Q. How long will an ordinary canal-boat last in active business?

A. That altogether depends upon how they are built. Some of them last six or seven years, some twelve years, some fourteen years, some twenty years, some five years, some four years, before they are played out.

Q. Did you know the reputation of the boats manufactured at Coughdenoy prior to 1871—I mean as to their value, as compared with other makers?

(Objected to; objection overruled; exception.)

The boats that they built down around there were never classed very high.

Counsel for claimant renews the offer of the whole entry in regard to the Kate Green, as contained in the book above referred to, as evidence to contradict one of the witnesses called by the libellants.

(Objected to; objection sustained; exception.)

Counsel for claimant offers that portion of the entry which
349 consists of the words Kate Green in the column of the name of boats, and the figure "3" in the column of class.

(Objected to; objection sustained; exception.)

Cross-examination by Mr. LEWIS:

Q. Did you ever know a canal-boat which lasted only four years from the time it was built?

A. Yes, sir; I have known them to last by repairing them over. I have known them to rot out in four years.

Q. Did you ever know a canal-boat to become worthless in four years from the time it was built, new?

A. Not exactly worthless. I have known them to have the bow rot out and the stern rot out.

Q. Needing repairs?

A. Needing repairs.

Q. But being kept in ordinary repair, I understand you to say that a canal-boat would last much longer than that?

A. Yes, sir.

Q. All that you meant by that answer was that, if not repaired, they might become worthless in four years?

A. Yes, sir.

Q. You have known them to last 20 years?

A. Yes, sir.

Q. Did you mean to say, in reference to the value of the boat that was described to you, that its value, when new, would be $1,800 to $2,000?

A. No, sir; not when new.

Q. When how old?

A. About four years old.

Q. And you think the next year it would have been $300 less?

A. They rate them about that rate; about $300 depreciation.

Q. And in four years more it would have been worth $1,200 less?

350 A. That depends altogether upon whether you repair them or not.

Q. I am assuming that you repair them and keep them in good condition.

A. If you rebuild them, of course the value will go up again.

Q. They would not deteriorate at that rate?

A. No.

A. Assuming that they are kept in perfect repair, what is the deterioration?

A. I should say about $150 a year or so—that is, keeping them in good-first-class repair.

Q. They deteriorate more rapidly as they become older, do they not?

A. They wear more rapidly.

Q. Yes; take a boat that is ten years old, it lessens in value in the year following much more than a boat is three years old would, does it not?

A. Yes, sir.

Q. Even though it is repaired?

A. No; because you can take a boat ten years old and repair her, and make her most as good as a new boat; it depends upon what repairs you do to her.

Q. I mean keeping it in ordinary repair. Take the case of a boat three years old, such as you have described, that is kept in good repair, how much would it deteriorate between the third and fourth years of its use?

A. In my judgment about $1,000 in four years.

Q. You do not understand the question. I say take a boat three years old that is kept in good repair, how much would it deteriorate in the year following?

A. Looking at it in a business light, it would change about $150.

Q. Did you ever have any experience in insuring boats?

A. Yes, sir; that is, I examined them for the insurance company to insure them.

Q. You did do that?

A. Yes, sir,

351 Q. Is that your business at present?

A. That has been my business part of 1877; part of this year.

Q. You do not pretend to have examined the Kate Green?

A. No, sir.

Q. Do you place a valuation upon a boat also?

A. I have done so.

Q. For the companies?

A. Yes, sir.

Q. For what companies?

A. For different companies'; the Underwriters', the Brewers' and Mai?-sters'.

Q. Any Buffalo company?
A. Some Buffalo companies.
Q. The Western?
A. No, sir; the Western is out of date long ago.
Q. When it was not out of date? I understand you were in the business from 1853?
A. No; I am speaking of 1877.
Q. What per cent. of the value of the boat do they take the risk for?
A. I don't understand your question.
Q. How much will they insure a boat for? What proportion of its value?
A. They insure a boat for what the book calls for, less $50 or $100 average, as it might be.
Q. Less what book calls for?
A. The classification book.
Q. Similar to the one that you have described here?
A. Yes, sir.
Q. Is it assumed that they insure for the full value of the boat?
A. Yes, sir; they insure for the full value that is on that boat.
Q. I mean to say the full value of the boat, not the value as placed in the book. Do you mean to say that they insure any piece of property up to its full value?
352 A. Yes, sir, I do; less, as I tell you, $100 or $50 average. I have got a policy now *of* $150 average.
Q. I am not talking about average. I am talking about whether an insurance company insures a boat up to its full value.
A. Yes, sir.
Q. Then I understand you that the rates mentioned in this book that you have been describing are the amounts for which the insurance companies insure the boats?
A. That is what they have done with my boat. I don't know what they have done with this boat.
Q. The rate mentioned there is the amount for which they will insure the boat?
A. Yes, sir.
Q. Were you ever in Coughdenoy?
A. I don't think I was. I was within a few miles of it.
Q. Do you know all the boat-builders there?
A. No; I don't know any of the boat-builders there only by name.
Q. Did you ever own a boat built there?
A. No, sir.
Q. Can you think of any boat now that was built there—that you know was built there?
A. I cannot exactly state any name.
Q. Have you any boat in your mind now that you know was built there?
A. I think the Lotta Canada was built there.
Q. How many times have you seen that boat?
A. I have seen her a great many times—10 or 12, or 14 or 15 times, probably.
Q. When was the last time you ever saw it?
A. About three years ago, I think.
Q. When was the first time?
A. The first time I saw her when she came out new.
Q. When was that?
A. I think it was seven or eight years ago.

Q. Is she in use now running on the canal?

A. The last time I saw her was in Rome; she was laid up there; they were not doing anything with her.

353 Q. You don't know anything about her now?

A. No, sir.

Q. Is that the only boat that you can recollect?

A. That is the only one that I can swear to, to the best of my recollection. I know many of them that they call "long level" boats; all I know is the name as I see it on the stern.

Q. Did you buy a canal-boat in 1871?

A. No; I don't think I did.

Q. Did you sell one in 1871?

A. We might have in the firm, but I did not do it.

Q. Do you recollect anything about having sold one?

A. I think we built five or six boats in 1871.

Q. In Buffalo?

A. Yes, sir.

Q. Do you know their names?

A. I know the names of all the boats built, most.

Q. Suppose you state the name of one boat that you built and sold in 1871.

A. I could not say positively the name of one.

Q. Can you say anything about the year 1870?

A. I am not positive whether we built the Maggie O'Rourke and the Alanson Morse in 1870 or 1871.

Q. Who did you sell those to?

A. One was sold to Frank O'Rourke and the other was sold to George Calsteine.

Q. What class of boats were they?

A. Round-stern lake-boats.

Q. What class?

A. First class.

Q. Are they mentioned in this book?

A. Yes, sir; I think they are; I am not certain.

Q. Was it the James W. Morse, the Fred. R. Morse, or the Nelson Morse?

A. Alanson Morse, I think. I don't know but they might be later than that; I don't know what year they were built in.

354 Counsel for claimant offers in evidence from the testimony of Sherman S. Jewett, taken on the trial, that portion stating that he sold the claim which is now held by Mr. McKnight for damage to the cargo, at bankruptcy sale, to Mr. McKnight for $25.

Redirect by Mr. HOLT:

Q. In making the appraisal of the value of boats for the purpose of these insurance companies, upon what basis do you fix the amounts in the books?

A. Cash basis.

Q. Do you attempt to give the actual value of the boat or a sum less than the actual value?

A. Probably it might be $100 either way.

Q. What do you attempt to do; do you attempt to undervalue the boat or to give its accurate value?

A. I never attempted to undervalue; I have given about what I thought they were worth, in my estimation.

Q. Then, as I understand you, the company usually insure for $50 to $150 less than this amount?

A. $50 less on the first-class boats, $75 on second, and I am most positive it is $150 on fourth-class boats.

By Mr. LEWIS: Less than the amount mentioned in that book?

A. Yes, sir; that is for drawbacks.

Counsel waived the signature of the witness to the above deposition.

NEW YORK, *Dec.* 26, 1877.

JOHN F. BAXTER, a witness called on behalf of the plaintiff, being duly affirmed, testifies as follows:

By Mr. LEWIS:

Were you doing business in New York in 1871?

355 A. Yes, sir.

Q. What business?

A. We were in the ship-chandlery and wrecking business.

Q. What firm?

A. John C. Baxter and Son.

Q. Do you recollect the sinking of the Kate Green?

A. Yes, sir.

Q. At the slip between Piers 46 and 47, North River?

A. Yes, sir.

Q. Were you employed to raise her?

A. Yes, sir; we were.

Q. And you did so?

A. Yes, sir.

Q. State what services you performed?

A. We used wrecking pontoons, lifting apparatus to raise the boat, with what cargo she had in her, and we worked there altogether some eight or nine days.

Q. Have you ever been paid for it?

A. We have not; no sir.

Q. What was the value of the services performed by you?

(Objected to as not an item of loss; objection overruled; exception.)

A. $540.

Q. Will you give the items of that account?

A. The charge for the use of the pontoons; the hydraulic jacks and chains necessary to raise her; and after the boat was raised in the usual way it was found that the bulk of this cargo was out of her owing to this injury to the boat.

Q. Just give the items.

A. I have made the charges for the wrecking pontoons 8 days' service, at $50 a day. To hire a scow to save the cargo, the scow was hired in order to receive this corn. There was an experiment

356 made to try to pump it from the bottom, the cargo that had gone through her, by steam pump, and the scow was hired to receive that cargo; and it was not a success at all, owing to the mud and dirt that came up with it, and we did not save anything worth while of the cargo.

Q. Just give the items.

A. The next is the towage of the pontoons to the shop, $15; then there was the towage of this boat in chains and the pontoons from this pier to Governor's Island, where she was beached; and there was towage of the pontoon from Governor's Island back again.

Q. Have you given the amounts of each of those?

A. The first is $400, eight days at $50 a day; the use of the steam-pump to pump the corn, $40; hire of scow, $15; towage of the pon-

toons and the sunken boat, $15; towage of the pontoons with the boat in chains to Governor's Island, $30; towage of the pontoons from Governor's Island to Hoboken, $30; towage of this scow to the sunken boat and back again where we hired her, $5 each, $10; making in all $540.

Q. Where did that employment take place?

A. In the insurance office, with Capt. Quick present.

Q. The insurance office in New York?

A. Yes, sir; the agency.

Q. Do you know where it was?

A. Capt. Kingman was the agent, 139 Broadway; that is where we were.

Q. Were you at any time told to discontinue your labors before you got through?

A. No, sir.

Q. Was any of this labor performed after it was discovered that the cargo and the boat were a total loss?

A. Yes, sir; the towing up to Governor's Island was after, after it was known that the bottom was all out of her.

357 Q. And were you directed to do that also?

A. Yes, sir.

Cross-examination by Mr. HOLT:

Q. I don't think you have answered the question as to who employed you to do this.

A. We got the first notice of it from Capt. Kingman, and went to his office and saw him about it; they were on the cargo, the boat not being insured; the order was given there in his office that we should go to work, by Capt. Kingman with the captain of the boat there.

Q. Do you mean that in making your contract you made it at all with Quick; is that what you mean by the expression that he was there; did you give any credit to Quick?

A. Yes, sir.

By Mr. LEWIS: Did you consider him liable?

A. Oh, yes; we considered him liable at that time; the boat was known to be injured considerably, and Capt. Quick knew that.

By Mr. HOLT: Of course the boat was injured, and Capt. Quick was the owner?

A. Yes; it was understood that he would have to pay his share in general average, whatever that was.

Q. The question was whether you did this work to the credit of Mr. Quick?

A. Not wholly; no, sir.

Q. Did you at all?

A. Yes, sir.

Q. Did you ever render him a bill?

A. I never have; I never saw him after the boat was taken to Governor's Island but once or twice, when he cleared out home.

Q. Did you ever render anybody a bill?

A. I rendered it to Capt. Kingman, the insurance agent.

358 Q. When?

A. At that time, right away.

Q. Have you ever received any dividend on it?

A. Not at all; I never received any notice of the company paying any dividend.

Q. This boat sunk on the 27th of September, 1871, and she was raised within about eight or ten days after that?

A. Yes, sir.

Q. And you immediately sent in your bill, as soon the work was done?

A. To Capt. Kingman; we sent it in within two or or three days; the precise time I can't tell.

Redirect examination by Mr. LEWIS:

Are you positive about not having rendered any bill to Capt. Quick; didn't you write to him at one time?

A. I can't say positively; but I never have rendered a bill to Capt. Quick for it.

Q. Do you mean by a bill an itemized bill?

A. Yes, sir; such a bill as that.

Q. How about having demanded payment of it?

A. I don't recollect ever having rendered an itemized bill to Capt. Quick.

Q. Did you receive any notice of proceedings in bankruptcy of the Western Insurance Co.?

A. No, sir.

Q. Never have received any notice of their having gone into bankruptcy?

A. No, sir.

Q. Was Capt. Quick present, off and on, during this service there?

A. Yes, sir; all the while.

Q. Did he ever object to your rendering the services?

A. No, sir.

Q. Did he ever tell you at what point to cease your services?

A. No, sir.

359 Counsel for defendant moves to strike out the testimony of this witness, on the ground that it is immaterial and irrelevant; also that the claim is barred by the statute of limitations in this State.

Decision reserved.

Counsel waive the signature of the witness to the above deposition.

NEW YORK, *Dec.* 29, 1877.

ALFRED MAYER, a witness called on behalf of the claimant, being duly sworn, testifies as follows:

By Mr. HOLT:

Q. Where do you live?

A. In the city of Buffalo, Erie County, New York.

Q. What is your business?

A. I am engaged with an insurance company as surveyor and adjuster.

Q. Surveyor and adjuster in what cases?

A. Canal losses—canal-boats.

Q. How long have you been in the employ of marine insurance companies in that business?

A. 13 years the 4th of next April.

Q. What was your business in 1871 in that respect?

A. That was my business.

Q. Did you have anything to do with making out a canal-boat classification register for that year?

A. Yes, sir.

Q. You are the Alfred Mayer referred to upon the first page of the book?

A. If that is the 1871 register, yes, sir.

Q. Won't you describe briefly the nature of your duties in respect to the making out of this register?

360 A. The method is to look after the boat individually—each boat by itself—and, of course, approximate her value, and give her a class for insurance purposes, for the purpose of underwriting.

Q. In this column of valuations in this register opposite many of the boats is put a certain sum of money; what if that intended to represent?

A. The approximate cash value of the boat.

Q. Is it the custom of these appraisers, in making that valuation, to put down a less amount than, in their opinion, the boat is actually worth?

(Objected to; objection sustained.)

By Mr. LEWIS:

Q. Were you one of the appraisers?

A. Of that boat?

Q. Yes.

A. Not of that individual boat, to my recollection.

Q. Were you in that year?

A. Yes, sir.

Q. For the boats mentioned in the book?

A. For some of them.

By Mr. HOLT:

Q. How long have you been connected with canal-boats?

A. 38 years.

Q. Have you ever bought and sold canal-boats and interests in them?

A. Yes, sir.

Q. And for 13 years it has been your business, I understand you, in connection with marine insurance companies, to put a valuation upon canal boats?

A. Yes, sir.

361 Q. For the purpose of insuring them, and for the purpose of estimating the loss in case anything occurs to them?

A. Yes, sir.

Q. Do you remember the canal-boat the Kate Green?

A. Yes, sir.

Q. How many times did you ever see that boat?

A. I have certainly seen her once, and perhaps 25 times.

Q. When did you last see the boat?

A. In 1871.

Q. About what time of the year?

A. I should think either in the latter part of August or the first of September, or in that immediate neighborhood.

Q. Where was she then?

A. In the city of Buffalo.

Q. Did you hear, shortly after, of her being sunk in New York?

A. Yes, sir.

Q. And is it in reference to that fact that you fix the date in this way?

A. Yes, sir.

Q. Is the description contained in this register of this canal-boat a correct one, so far as you remember?

(Objected to.)

Q. Describe the kind of boat that she was at the time you saw her in 1871.

A. She was what we call a quarter-deck, scow, stern, pine-sided boat.

Q. Do you know how old she was?

A. I couldn' swear positively as to her age.

Q. What is the kind of boat that comes under the designation of the third class in this register?

A. Those boats that are fit to carry a load of corn or oats, but not one that we consider competent to carry more valuable loads of perishable property.

Q. And there are other classes, are there not?

362 A. Yes, sir.

Q. What, in your opinion, was the proper class to which that boat belonged at that time?

(Objected to; objection overruled; exception.)

A. Third.

Q. What, in your opinion, was the worth of the boat at the last time that you saw her—the cash market value of the boat?

(Objected to on the ground that the witness is not shown to be sufficiently familiar with the boat; objection overruled; exception.)

A. Anywhere from $1,800 to $2,200.

Q. What is the standing, among canal-boat owners and dealers, of the canal-boats made at Caughdenoy, as compared with those made in other parts of the State?

(Objected to; objection overruled; exception.)

A. When we speak of boats made at Caughdenoy, or South Bay, or North Bay, or Cleveland, or one or two other points on the river Oneida and Oneida Lake, we call them all Oneida Lake boats, and their reputation is bad for durability.

Q. What, in your opinion, would be the period in which this boat, the Kate Green, would become worthless after the time it was new?

(Objected to; objection sustained.)

Q. From what you saw of this boat, won't you describe what kind of a boat she was, and the condition she was in the last time you saw her?

A. My impression is that I went to look at that boat, lying in the river at Buffalo, with a view to see whether or not she was sufficiently good to carry a load of wheat; that is my impression now, that that is what called me at the boat at that time, and I refused to take a load of wheat in the boat, considering her only at that time a good, fair, corn boat; or, in other words, a good, fair, third class boat,

363 which would not allow of her carrying a load of wheat. Only first and second class boats carry wheat, because of its value.

Q. To what extent were you familiar with that boat in August or September, 1871?

A. I was on board of it and looked it over endwise and sidewise; I didn't go down into it, because the deck was only about so wide on either side, and a little deck at either end, forward of the cabin and aft of the horse-stable, and you could look right down into the boat, at the manner of her construction, the character of the timber that entered into the construction of the boat, and the style of the boat; and supposing the boat to be, as is recorded, four years and over old at that time, I did not deem her a safe boat to carry $12,000 or $14,000 worth of perishable property.

Q. From the examination that you made are you able to state the number of years that that boat probably would last from the time she was a new boat?

(Objected to; objection overruled; exception.)

A. That class of boats would probably last for ten years in ordinary repair.

By Mr. LEWIS: How about that boat particularly?

A. I refer especially to that boat—to that style of boat.

By Mr. HOLT: If it was four years old then it would last about six years more, in your opinion?

A. Yes, sir; with ordinary repairs.

Q. Is there any difference in the prices at which canal-boats are sold at cash and upon credit?

A. Yes, sir.

By Mr. LEWIS: Did you ever buy a canal-boat on credit?

A. Yes, sir.

Q. Did you ever buy one for cash?

A. No, sir, not fully; yes, I did, too.

Q. What time intervened between the two purchasers?

364 A. One was bought in 1857; I didn't pay for that entirely, either; it lacked a few hundred dollars; and the other one was in 1863.

Q. Were they the same class of boat?

A. No, sir; one was a lake boat and the other a bull-head boat; one cost a thousand dollars more than the other; one was brand new, and the other was a year old.

By Mr. HOLT: Have you known of any sales of canal-boats for cash and also upon credit?

A. Yes, sir.

Q. To a large extent or to a small extent?

A. I have probably known—I was going to say of a thousand.

Q. Now, I ask you if you are able to state whether there is any difference in the price which a boat will obtain whether sold upon credit or for cash?

(Objected to; objection overruled; exception.)

A. There is a difference.

Q. Would the price for which a boat was sold, all but $400 of which was on credit, the payments to run over two or three years, and with no other security for the payment of the note given but a chattel mortgage on the boat, be, in your opinion, a fair criterion of the market value of the boat?

(Objected to; objection overruled; exception.)

A. It would not.

Q. What would an entirely new boat, exactly similar to the Kate Green, have been worth in September, 1871?

(Objected to; objection overruled; exception.)

A. A boat like her new could have been built, with a fair profit to the builder, for $3,000 cash.

365 Q. And that, in your opinion, would be the market value of a new boat at that time?

A. Yes, sir.

Q. What is the rate of deterioration in the value of canal-boats in each year after they are new?

(Objected to; objection overruled; exception.)

A. I have a rule of making it ten per cent.

Q. State how it is in the market generally, in your opinion. What

is the effect, for instance, of a boat being a year old, as compared with its value if absolutely new, or four years old.

(Objected to; objection overruled; exception.)

A. We fix the approximate value of the boat upon the basis of ten per cent. deterioration annually, and, in some instances, even more than that, owing to the character of the manufactured article; but ten per cent. is the least that we take into consideration upon the best of them.

Cross-examination by Mr. LEWIS:

What do you mean, in speaking of the deterioration of canal-boats, by saying, "We fix a rule of ten per cent"?

A. I mean from natural decay and wear.

Q. Who does it?

A. Myself and other surveyors.

Q. Do you mean to say that in the market a boat that is two years old will bring 20 per cent. less than its price when it was built?

A. I do not mean to say so.

Q. And you didn't mean to say that a boat that was four years old would bring in the market 40 per cent. less than its price when it was built?

A. I did not say ten per cent. upon the cost price per annum; I have not said so in my testimony.

366 Q. I say you did not mean that?

A. I did not say so, even; consequently I did not mean it. If a boat cost $3,000, the first year she would depreciate $300; that would make the boat worth $2,700; the second year she would depreciate ten per cent. upon $2,700, making $270, and that would not be 20 per cent. of $3,000. That is what I mean to say; the meaning that I meant to convey, not upon the original cost, because there would be something left after a boat was ten years old; she would not be very valuable, but there would be an intrinsic value; there would be something left.

Q. When you said that a boat lasts ten years, did you mean that she was valueless after ten years?

A. For our purposes as a freight-boat, doing business on the canal, she is valueless, and yet there is some value there, because of the iron that there may be in her construction, and the wood.

Q. But for the purposes of use on the canal she is valueless?

A. She would ordinarily be valueless with ordinary repairs; a certain character of boats.

Q. Did you ever know a boat of that class running on the canal, over ten years old?

A. Of that particular class?

Q. Yes?

A. Not without being rebuilt; not with ordinary repairs; I don't know of an instance, not one, but I do know of a great many instances where boats of that character were gone when they were eight years old, sunk, cast away, good for nothing.

Q. In whose employ were you when you went to visit that boat in 1871?

A. I was in the employ of the Lamar Insurance Co.

Q. That is a marine insurance company?

A. Yes, sir; fire and marine.

Q. Have you got your survey that you made of that examination?

A. In 1871?

367 Q. Yes.

A. No, sir; I did not write any survey; I made a personal examination of the boat; there was no register being made at that time; the register was already formed.

Q. You did not make the examination in the spring?

A. Not to my knowledge; I have a memorandum of the boats I did look at, and I cannot find her name among them.

Q. That is a very usual circumstance, is it not, in your business, to examine these boats for the purpose that you mention, of seeing whether they are freightworthy?

A. Yes, sir; we do that perhaps 500 times in a season; boats that perhaps have been repaired, or something has been done by which the owner claims she is entitled to a better rating.

Q. Do you mean 500 times, or 500 different boats?

A. 500 different boats.

Q. And you have done that ever since, haven't you?

A. Yes, sir; every year more or less; that has been my business for thirteen consecutive summers.

Q. To whom did you make your report of your visit to the Kate Green?

A. I did not make it to anybody; I had the management of the canal business, and it was not necessary to make a report to anybody.

Q. You were employed by the insurance company to be the person in its interests to make these examinations?

A. Yes, sir.

Q. Who did you converse with, if you remember, next after your examination of that boat; who did you make any report to?

A. I did not make any report to anybody.

Q. I don't mean a report in a technical sense; who did you ever talk to about it?

368 A. I might have talked with George Chittenden, who is another surveyor, and who has been in the business many years.

Q. Did you?

A. I would not say positively that I did.

Q. How many canal-boats do you suppose you have looked at and examined for the same purpose since you saw the Kate Green?

A. Very likely from 7,000 to 10,000; I have no doubt that in six years it has been 10,000; I don't think that would be out of the way, for when we load a hundred canal-boats a day in Buffalo, as has been done repeatedly, it is a great deal of work.

Q. Do you remember any other canal-boats that you examined in that year for the same purposes?

A. To mention the name?

Q. Yes.

A. I could mention lots of them, I suppose.

Q. I mean that you are sure about them, that there is no question about?

A. I would not undertake to mention one particular boat now.

Q. Do you remember any in 1872?

A. Yes, I looked at boats in 1872, and I looked at them more in 1872 than I did in 1871, for the reason that that register was revised in the spring of 1872, and I was one of the reviewers. We did not make an individual classification, that is, looking at the boats individually, as in 1871; and therefore, when the season of 1872 approached, and we were doing business again, it became necessary.

Q. What boat did you look at in 1872?

A. I don't know the name of one; I couldn't call to mind now positively the name of one.

Q. Did you have any interest in this boat, the Kate Green?

A. Not any, sir; I never had; I don't know the owner, I did not know him.

Q. Have you any interest in the claim for the cargo?

A. No, sir; not one dime, and no expectations.

369 Q. How long was it after you had seen that boat that the fact she had sunk was first called to your attention?

A. I should think, speaking within bounds, 20 or 25 times.

Q. Did you then make any memorandum of what sort of a boat she was?

A. No, sir.

Q. Do you know what color she was?

A. She was mottled; she had green, and black, and white, etc.

Q. Mixed?

A. In strips, like a barber's pole somewhat.

Q. A striped boat?

A. Her iron was black, and part of her wood was white, and part was green; the water-wales were green, and the side of the cabin was white, and the deck was white; some parts had paint on, and some did not have any on; it was worn off.

Q. Were they painting her at that time?

A. No, they were not.

Q. Describe her sides again.

A. Pine sides.

Q. Timbers?

A. No, sir; she was what we call a solid-sided boat.

Q. What do your mean by solid-sided?

A. No frame; she is not a frame boat; planks from 4½ to 6 inches thick on edge, bolted together; bolted to what is termed a bilge-piece, and a deck-piece, or top-streak, making two hard wood-streaks, one top and one bottom, and the balance of the side being pine.

Q. Have you seen any of the testimony in this case?

A. Yes, sir; I saw it in this gentleman's hands, and he said it was a part of the testimony; I did not read it.

Q. Did you read any of it?

A. No, I did not read a word of it.

Q. Has any of it been read to you?

370 A. A few lines.

Q. On what subject?

A. On the subject of this boat.

Q. Whose testimony was it?

A. I don't know.

Q. Do you know whether it was one of the claimant's witnesses or one of the libellant's?

A. I don't know.

Q. Was it the owner of the boat?

A. I don't know; simply in reading it he said that was a part of the testimony of one of the witnesses; he didn't tell me whose—upon which side of the question.

Q. When was that done?

A. It was done about 12 o'clock to-day; I only got here at 11 and something.

Q. You don't recollect any other examination of the Kate Green but the one you have testified to?

A. No.

Q. Who did you see on that occasion when you went to see the boat?

A. I don't know; I don't know a soul that belonged on the boat, and I don't know them now.

Q. Did you just go down and go on to the boat, without anybody being around?

A. There were people around the boat.

Q. Do you know who they were?

A. No, sir; I don't know.

Q. Do you know how many?

A. No, sir; I do not.

Q. Were they men, women, or children?

A. There were men and boys on that boat and boats lying by the side of it; I don't know whether they belonged on the Kate Green or on the other boats. The Kate Green lay in a fleet of boats, a number of boats.

Q. How do you know it was the Kate Green that you saw?

A. I saw the stern.

Q. Do you recollect now to have seen her stern?

A. Yes, sir.

371 Q. You have a present recollection now of just exactly how the stern looked?

A. No, I have not; I have a recollection of the form of the stern.

Q. I mean in reference to the name; I understood you to say you saw here name on the stern?

A. I did see her name.

Q. How was it; painted?

A. Certainly.

Q. On a board or on the boat?

A. On the stern-board; not a temporary board, but on the board that is part and parcel of the boat, the formation of the stern.

Q. What is the difference between a first and second class boat?

A. The very best canal-boat becomes a second-class boat in time, and again in time becomes a third-class boat, and again becomes what we term a fourth-class or coal-boat; thence from that to a lumber-boat, or one simply fit to carry a load of lumber, pine lumber, if you please, or anything that will not damage because of contact with water.

Q. Now, with regard to the valuation of this boat, you said she was worth between $1,800 and $2,200?

A. Yes, sir; I am simply approximating; that is the approximate cash value.

Q. Is that a value for which the Lamar would have taken a risk?

A. We would have taken a risk for $1,800, and we might have taken a risk for $2,000, but I should not for a dollar more.

Q. Then the value was really more than the amount for which they would take a risk?

A. No, sir.

Q. You have just said that her value was between $1,800 and $2,200, and you would not take a risk for more than $2,000?

A. I say they would not with my consent.

Q. Then I say they would not take a risk for as much as you think her value was?

372 A. I might consider her worth between $1,800 and $2,200, and

still we should not want to insure her for $2,200, because that would be very extreme.

Q. You do not go to the very extreme value of the boat?

A. No, we do not care to.

Q. It very often happens that a boat will bring in market more than your insurance company will take a risk for?

A. It often happens, but it more often happens that they will sell for less than they are valued at in the register, because four-fifths of all the buyers will go to look at that register before purchasing, doubting their own judgment, to ascertain what she is valued at—what she is worth.

Q. And don't they consider that a low valuation rather than a high one?

A. In this register?

Q. Yes.

A. They consider that, as near as may be, a close approximation of her cash value; not a time sale, but the cash value for insurance purposes; because if we insure a canal-boat and she is lost we have to pay money for it; we don't give a note; it is cash deal, and those valuation, as near as may be.

Q. Does the same appraiser make the investigation of the boat, take the measurements, and value it, or are there more than one?

A. There are usually two together, one representing one company and another representing another, in making those classifications, because all the companies doing business would like to have the register concur, but they each defray their own expenses.

Q. The valuation which you have placed upon the boat is the one which you would give in case you were making up a register?

A. I think the boat was worth about $2,000.

373 Q. I am asking you whether the valuation you gave is the one which you would use in case you were making the register?

A. Do you mean between $1,800 and $2,200

Q. Yes.

A. Possibly I should cut it right in two if I had any doubt about $1,800 not being enough, or $2,200 too much; I should cut it in two and make it $2,000; I don't want to get it too high or too low.

Q. That is the valuation which you place on the boat?

A. Yes, sir; $2,000 I should have placed there, considering the boat worth about $2,000 for the business.

Redirect examination by Mr. HOLT:

Q. The present owner of the cargo is Frederic A. McKnight, I understand?

A. I suppose he is the owner.

Q. He is a gentleman you know?

A. Yes, sir.

Q. He is in your office at Buffalo?

A. Yes, sir.

Q. You know him very well?

A. Yes, sir; have for many years.

Q. What is the company that you are now employed by?

A. The Manhattan Fire Insurance Co., in Wall street.

Q. How long have you been with them?

A. Since 1873, I believe.

Q. The subject of the loss of that boat, and of the payment of the insurance money by the company at Buffalo, was a frequent subject of conversation at the time that it occurred, was it not?

A. Immediately after, and up to the present time it has been discussed repeatedly.

374 Q. At that time you recall that you had seen the boat just before she came down to New York?

A. Yes, sir.

Recross-examination by Mr. LEWIS:

Q. Had you ever known of a collision before resulting in the loss of a canal-boat that you had been familiar with?

A. Yes, sir.

Q. What one?

A. The N. Althaus, that was lost in the East River; a steamship of the Bremen line swung down on her and sunk her.

Q. When was that?

A. Four or five years ago.

Q. You don't recollect the month?

A. No, sir; that was not a matter that I was connected with; I had no knowledge of it, except being a witness on the case.

Q. When did you examine that boat before she sunk?

A. The N. Atthaus?

Q. Yes.

A. In 1871.

Q. Where?

A. Up here in what is called the California dock, over in Jersey.

Q. For what purpose?

A. For the purpose of making a register.

Q. Do you recollect what sort of timber she had in her sides?

A. Yes, sir.

Q. Recollect all about her?

A. Not all about her.

Q. Could you tell as minutely about her as you have about this one?

A. No, sir.

Q. Do you recollect any others?

A. Yes, sir.

Q. What others have you examined that afterwards were sunk?

375 A. The Emma Petrie.

Q. You are able to state all the facts in regard to her?

A. I am; I examined her before she was sunk, and after she was sunk, and I saw her while she was sunk, so I could tell you all about it.

Q. What other one?

A. Scores of them, probably, but I don't recall any; I have no reason now to know anything about them.

Q. You had examined them before they were sunk, and you afterwards heard they were sunk?

A. This one; I went to where she was sunk, and after she was sunk, the Emma Petrie.

Q. Are there any others?

A. Perhaps there are.

Q. Do you know whether there are?

A. I don't know; I would not say positively one way or the other.

Q. In one of them you testified?

A. The N. Althaus.

Q. You testified in court?

A. Yes, sir.

Q. Where?

A. In Brooklyn.
Q. When?
A. About three years ago.
Q. On what point?
A. On the point of her value, and when built.
Q. What description of boat did you give her?
A. She was a lake boat, a frame boat.
Q. Did you describe her in your testimony?
A. I suppose I did.
Q. What description did you give her?
A. I said she was a lake boat.
Q. What else did you say about her?
A. I said she was a frame boat; I said she had been rebuilt.
Q. How about her sides?
A. She was a plank boat; frame boat.
Q. How about her deck?
376 A. She was a solid-deck boat, with hatches in, like a vessel.
Q. What was the other one you mention?
A. The Emma Petrie, a bull-head boat, or high-deck boat; frame boat.
Q. When was she sunk?
A. Last summer.
Q. When did you examine her?
A. Last summer.
Q. You don't recollect any other?
A. I don't know as I call to mind any just now.
Q. You cannot call them to mind just now?
A. That sunk?
Q. Yes.
A. Yes; the boat J. W. Barrow, sunk last summer, and the Charlotte sunk, and the boat Ledora sunk.
Q. It is no consequence to know what boats sunk, excepting those boats that you are able to testify about.
A. Those are the very ones I am able to testify about, because we were interested in the cargoes of each and every one of them.
Q. Did you examine them afterwards?
A. Yes, sir.
Q. All these that you have testified about?
A. Yes, sir.
Q. Excepting the Kate Green?
A. I never saw her after I saw her in Buffalo.
Q. I know it, and the inference would have been that you did see her; you stated that you had seen them all?
A. I said sometime ago that I had never seen her before or since; I saw her at Buffalo.

(Counsel for the respective parties agree that the signatures of all the witnesses to the testimony on this reference be waived.)

377 NEW YORK, *January* 22, 1878.

THOMAS W. GREEN, a witness called on behalf of the libellant, being duly sworn, testifies as follow:

By Mr. LEWIS:

Q. Where do you reside?
A. I reside in Caughdenoy, Oswego County, New York.
Q. What is your business there?

A. I am what is called a kind of a general dealer. I am mixed up with a good many different kinds of business; I am somewhat interested on the canal, and some in real estate.

Q. Did you know the canal-boat Kate Green?

A. Yes, sir.

Q. Did you build her?

A. I did; I caused her to be built.

Q. You superintended the building?

A. I did.

Q. When?

A. In the spring and summer of 1867.

Q. Where?

A. At Caughdenoy.

Q. What was the expense of building her?

(Objected to as immaterial; objection overruled; exceptions.)

A. Between $3,500 and $3,600.

Q. Did you frequently see her between that time and the fall of 1871?

A. Yes, sir.

Q. Was she kept in good repair during that time?

A. I think she was.

Q. Have you dealt considerably in canal-boats?

A. I have; yes, sir.

Q. You may state how the boat was constructed.

378 A. She was what we term a quarter-deck, bull-head, or 'maphrodite, as they call them; a round bow and a scow stern.

Q. Describe the manner of the construction of her sides.

A. I think the sides were five inches thick, bolted, what we call drift-bolts, passing through one side and partially through another, and vice versa; bolted thoroughly. I think she was bolted once in every six or eight inches lengthwise.

Q. And then on the inside?

A. Clamped, what we term a brace-clamp, from the top streak to the bottom, and lined, sealed up inside, for the purpose of carrying grain, between the clamping and the side of the boat.

Q. What do you mean by "sealed up"?

A. These clamps are two inches thick; they set right up against the side of the boat and strengthen it; and between the clamping—for instance, there is a clamp that runs from the bottom streak to the top; between the clamp and the bottom, also between the top of the clamp and the top streak, it is sealed up.

Q. With what is called weather-boarding?

A. Yes, sir; in order to make it secure against any dampness that might occur.

Q. Was that boat constructed so that it would carry safely all kinds of grain?

A. Yes, sir; we intended that it should be so constructed to carry it as safe as any boat of that character.

Q. Did it, in point of fact, carry grain safely?

A. Yes, sir.

Q. To your knowledge?

A. Yes, sir.

Q. Was it used at all for carrying wheat?

A. Yes, sir; it took down a load of wheat the last trip in the fall of 1867; it froze in at Mohawk and held the load until spring, and delivered it in this city without a bushel being damaged.

Q. You say the boat was frozen in the canal?

A. Frozen in the canal at Mohawk.

379 Q. With a cargo of wheat on board?

A. Yes, sir.

Q. Were there other boats there also?

A. Yes, sir; what we term first-class lake boats.

Q. Did they succeed any better?

A. I speak now from what I learned through the captain of the boat, that his boat was the only one; there were several others, some ten or twelve there, and his was the only one that delivered her cargo without more or less damage.

Q. You did not see it?

A. I did not see it; I wasn't here when they delivered the cargo; I saw them lying there; I was there in the winter.

Q. So that you do not know anything about that?

A. Not of my personal knowledge.

Q. But you intended, in constructing this granary inside, that it should be sufficient for the purpose of carrying wheat as well as other grains?

A. Yes, sir; we built it for that purpose, for carrying anything that we wanted to carry; if we had not intended to carry grain we should not have sealed her up at all; there is no necessity for it for lumber.

Q. I will ask you whether a person making an examination of the boat Kate Green, by standing on the edge of her deck and looking down into the boat, without going down into it, could come to any correct determination as to the condition of that boat?

(Objected to; objection overruled; exception.)

A. I shouldn't think they could.

Q. Why not?

A. Because they could not see a timber in her; the only way for them to ascertain would be for them to go down in the boat and tear up the lining and examine the timbers; they are all covered; on

380 the same principle you might as well undertake to tell the condition of this floor under this carpet.

Q. This was what was called an open boat, I understand?

A. What is termed a quarter-decked boat, decked in at the end; I think she was decked in eight feet at either end, and about 32 or 33 inches on either side, just about the width of a barrel.

Q. How is it in respect to the probability of a boat of this class lasting; will it last as long, or not so long, as a boat that is closed on the top; what is the tendency?

A. The tendency is that it will last longer; the more open the boat the more circulation of air, and there is a tendency to preserve the timbers. For instance, a boat that becomes damp inside by carrying a load, or anything of that kind, when she is light the air and sun has free course to dry them out.

Q. I will ask you in regard to the color of this boat, the Kate Green; was there anything peculiar in the way she was painted?

A. Yes, sir.

Q. Will you state about that?

A. She was trimmed with pink; her cabins had a streak around, something that I never saw before, an unusual color to put upon a boat; it happened to be the captain's fancy; I don't know why he did it, but he painted her a color that everybody would be likely to observe.

Q. You say you never saw anything of that kind?

A. I never saw a boat painted in that way.

Q. Something that would attract one's attention?

A. It would be likely to, I think.

Q. And something that they would be likely to recollect about?

A. I should think they would; then the stern of the boat was painted, for a boat of that class, better than most any boat that I ever saw; more expense.

Q. Was there anything about the stern that would lead one to notice it?

381 A. It would depend upon how observing they were; there was a landscape.

Q. I will ask you whether boat-building is carried on to any great extent at Caughdenoy?

A. No, sir.

Q. How many builders are there there?

A. There is none that you could really call builders; this boat was the first boat that I ever built, and I have built one since, and that I built at Tonawanda; there have been very few boats built there, and those were built by individuals; no regular boat-builders there, and never was, that made that a business; never thought of such a thing.

Q. Did you ever hear of there being such a thing as a reputation attached to the Caughdenoy boats?

A. No, sir.

Q. Are they known as distinguished from other boats?

A. No, sir; there haven't been enough built there; what is called the Oneida Lake scows, built on the Oneida Lake, at North Bay, and Constantia, and Cleveland, and through there, have got rather a bad reputation; they build them out of poor timber, and build them cheaply. I did hear considerable fault found with those boats, but it did not ring in ours, because we did not pattern after that style of boat.

Q. Captain Quick has testified that he purchased this boat of you on time, giving a mortgage and notes. Was interest also to be paid?

A. Yes, sir; he gave me endorsed paper for $300 down, and the balance his own notes, carrying interest at seven per cent.

Cross-examination by Mr. HOLT:

Q. He owes you still for the boat?

A. A portion.

Q. How much is now due you on the boat?

382 A. At the time of the sinking, if my memory serves me right, and I think it does, it was some $1,050; there has been none paid since.

Q. You would have sold it to him for less for cash, would you not?

A. I presume I might, some little; but such a thing don't occur in our country; we don't get any such chance.

Q. Assuming that this boat was in ordinary condition in 1871 as to its timbers, the parts that one could see without making a detailed examination, would not a good judge of canal-boats, who knew when she was built, be able to estimate accurately the value of the boat by standing on the rail and looking the boat over in that way?

A. No, sir.

Q. If you were to see such a boat as that yourself, standing so that you could see all over the boat, and knowing her age, would not you be able to judge with substantial accuracy of the value of the canal-boat?

A. No, sir; because her timbers might all be perfectly good.

Q. How many boats did you ever buy?

A. Six, I think.

Q. When you bought those boats did you take off the covering and look at the timbers?

A. I never bought old boats; I bought them new generally; I never bought but one boat that was of any age, and that I was forced to buy. All the boats that I have ever had anything to do with in buying I have had new boats; had them built generally.

Q. But you never did make such an examination?

A. I never did; no, sir; but were I going to purchase a canal-boat I should.

Q. Will you swear that is usual when a man buys a boat that is not new to make an examination such as you have spoken of?

A. Yes, sir.

383 Q. Are these open boats, as a rule, worth as much as the covered boats?

A. No, sir.

Redirect examination by Mr. LEWIS:

Do you know of any instance of a canal-boat being examined in the way that you have described?

A. Yes, sir.

Q. State it.

A. For instance the boat that I owned, the J. E. Keeler; he came aboard of her and tore up her lining and examined her timbers and put her in the first class. She is six or seven years old.

Counsel agree that the signature of the witness to the above testimony be dispensed with.

Counsel for claimant admits that the market price of corn in New York on the 27th of September, 1871, was the amount stated in the receipt for insurance upon it put in evidence.

Counsel for libellants offers in evidence the depositions of Sergeant J. Quick, William Timmans, and Erastus S. Brown.

FEBRUARY 6TH, 1878.

GUSTAVE H. SCHWAB, called on behalf of the libellants, sworn.

Examined by Mr. LEWIS:

What is your business?

A. Steamship agent.

Q. What is your firm?

A. Oelrichs & Co.

384 Q. Are you agents for the Bremen line of steamships?

A. Yes, sir.

Q. Where is your dock?

A. At the foot of 2d and 3d streets, Hoboken, N. J.

Q. How long has it been there?

A. Since 1863.

Q. Do you remember any occasion when any one of your steamers was in East River?

A. Never.

Q. For any purpose?

A. I remember none; but 15 or 17 years ago there were.

Q. Do you remember any collision ever occurring between any one of your steamers and a canal-boat Althause?

A. None.

Q. Do you remember any suit in admiralty or at law ever brought in the city of Brooklyn against any one of your steamers or against your company for collision with a canal-boat?

A. None whatever.

Q. You would have known it if it had been done?

A. Undoubtedly.

Cross-examination waived.

Testimony closed.

385 *Exhibits on reference.*

EXHIBIT 1.

[U. S. int. rev. stamps, 2–10 cents.]

SYRACUSE, *December* 12, 1870.

Thirty-five days after date I promise to pay to the order of Green & Warring three hundred and thirteen dollars and sixty-three cents, at Salt Spring National Bank, with interest; value received.

No. . $313.63.

C. H. USENBENTS.

Due January 19.

(Endorsed:) Green & Warring. Pay T. I. Leach cash, E. Merry cash. This note given for Jasper Quick for boat Kate Green. Cash paid Salt Spring Bank by C. H. Usenbents.

EXHIBIT 2.

NEW YORK, *Sept.* 27, 1871.

*Western Ins. Co. to Erastus S. Brown, Dr.*

| | | |
|---|---|---|
| 8,005.50 bush. corn, at 73½ c | | $5,884 34 |
| 194.6 " " at 73½ c | | 142 59 |
| | | $6,026 93 |
| Less 50 days int. from Oct. 7 | $56 42 | |
| Elevation | 60 00 | |
| Average | 50 00 | |
| | | 166 42 |
| | | $5,860 51 |

Rec'd payment Oct. 7, 1871.

ERASTUS S. BROWN,
AUGUSTUS BROWN,
*Attorney.*

386 *Commissioner's report.*

District court of the United States for the southern district of New York.

SERGEANT J. QUICK, LIBELLANT, AND FREDERICK A. McKNIGHT, colibellant,
*vs.*
THE S'SHIP NEVADA, &C., &C.

In pursuance of a decretal order made in the above-entitled cause on

the thirtieth day of November, in the year of our Lord one thousand eight hundred and seventy-seven, by which, among other things, it was referred to the undersigned, one of the commissioners of this court, to ascertain and compute the amount due the libellant and colibellant respectively by reason of the damages sustained by each of them respectively by the collision in the pleading mentioned, and to report thereon to this court with all convenient speed:

I, George F. Betts, the commissioner to whom the matter was referred, do report that I have been attended by the proctors for the libellant and colibellant, and claimant, and have [illegible]en and examined the testimony offered in support of the libellant's and colibellant's claim, and in opposition thereto, and do find that there is due to the libellant for the damages sustained by him by reason of said collision as follows, viz:

| | |
|---|---|
| Value of canal-boat Kate Green, total loss | $3,000 00 |
| Furniture on board lost | 35 00 |
| Unpaid freight on her cargo | 65 00 |
| Interest on $3,100, at 6 p'r cent. per annum from Sept. 27, 1871, to Feb. 19, 1878 | 1,189 72 |
| Total | $4,289 72 |

387 And further that there is due to the colibellant for the damages sustained by him by reason of said collision, viz:

| | |
|---|---|
| Value of cargo of the Kate Green | $5,860 51 |
| Interest at 6 per cent. per annum from Sept. 27, 1871, to Feb. 19, 1878 | 2,249 13 |
| Total | $8,109 64 |

And further that I find that it was not necessary to raise the wreck of the Kate Green in order to ascertain that it was not worth repairing, and I therefore disallow the claim of $540 for raising said wreck.

All which is respectfully submitted.

Dated 19th of February, 1878.

GEO. F. BETTS,
*U. S. Commissioner.*

EUGENE H. LEWIS,
*Proctor for Libellant and Colibellant.*

United States district court, southern district of New York. In admiralty.

SERGEANT J. QUICK, LIBELLANT, AND F. A. McKnight, colibellant,
*vs.*
THE STEAMSHIP NEVADA, &C.

The Liverpool and Great Western Steam Company (Limited), the claimant herein, by Nash & Holt, its proctors, hereby excepts to
388 the report of Mr. Commissioner Betts, dated February 19, 1878, assessing the damages in this suit, and alleges as the grounds of such exceptions:

1. That the commissioner erred in deciding that the value of the canal-boat Kate Green on September 27, 1871, the date of the collision, was $3,000; that in fact the value of said canal-boat at that time was not more than $2,000.

2. That the commissioner erred in deciding that the damages which F. A. McKnight, the colibellant, was entitled to recover was $5,860.51, the value of the cargo, upon the ground that the claim of F. A. McKnight is a claim to recover damages for a tort assigned to him by the Western Insurance Company of Buffalo; that such claim was not assignable, and that the colibellant is only entitled to recover thereupon, if at all, the sum of $25 paid upon the purchase of said claim.

3. That the amounts allowed for interest should be reduced accordingly.

Dated February 19, 1878.

NASH & HOLT,
*Proctors for Claimant, 50 Wall street.*

389 U. S. district court, southern district of New York. In admiralty.

SERGEANT J. QUICK AND FREDERICK A. McKnight, libellant and colibellant,
*vs.*
THE STEAMSHIP NEVADA, &C.

*Exceptions.*

Sergeant J. Quick, libellant, hereby excepts to the report of George F. Betts, esq., U. S. commissioner, filed in this cause on the 19th day of February, 1878:

First. That the commissioner erred in not finding that the value of the Kate Green was $3,200 on the 27th day of September, 1871.

Second. That the commissioner erred in not allowing to the libellant as part of his damages the item of $540, being the amount for which he is liable for services in raising the wreck.

Dated February 20, 1878.

EUGENE H. LEWIS,
*Proctor for Libellants.*

390 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on the 25th day of March, in the year of our Lord one thousand eight hundred and seventy-eight:

Present, the honorable Samuel Blatchford, district judge.

SERGEANT J. QUICK, LIBELLANT, AND FREDERICK A. McKnight, colibellant,
*vs.*
THE STEAMSHIP NEVADA, &C.

The exceptions taken by the claimant and libellants to the report of the commissioner in this cause having been argued and overruled:

Now, on reading the report on file of Geo. F. Betts, esq., United States commissioner, to whom the above matter was referred, by which there is reported due the libellant for his damages the sum of four thousand two hundred and eighty-nine dollars and seventy-two cents ($4,289.72), and by which there is reported due the colibellant for his damages the sum of eight thousand one hundred and nine dollars and sixty-four cents ($8,109.64):

On motion of Eugene H. Lewis, proctor for the libellant and colibellant:

It is ordered that said exceptions of libellants and claimant be overruled, and that the report be in all things confirmed, and that the libel-

lant recover in this action against the steamship Nevada, her tackle et cet., the amount reported due him, together with interest thereon from the 19th day of February, 1878, the date of said report to the date of this decree, amounting to twenty-four dollars and thirty-
391 one cents ($24.31), and his costs, which have been taxed at four hundred and eighty-eight dollars and seventy-seven cents ($488.77); in all, amounting to the sum of four thousand eight hundred and two dollars and eighty cents; and that said steamship, her tackle, etc., be condemned therefor.

And it is further ordered that the colibellant recover in this action against the said stsamship Nevada, her tackle, et cet., the amount reported due him, together with interest from the date of said report to the date of this decree, amounting to forty-five dollars and ninety-five cents ($45.95), and his costs, which have been taxed at forty ($40.00); in all, amounting to the sum of eight thousand one hundred and ninety-five dollars and fifty-nine cents; and that said ship be condemned therefor.

And it is further ordered that unless an appeal be taken from this decree within the time limited by law and prescribed by the rules and practice of this court, that the stipulators for costs and value forthwith pay into the registry of this court the amount of their stipulations, and that upon such payment thereof the clerk distribute the proceeds in satisfaction of this decree, so far as the said proceeds will satisfy the same.

SAMUEL BLATCHFORD.

392 District court of the United States for the southern district of New York.

SERGEANT J. QUICK ET AL.
*vs.*
THE STEAMSHIP NEVADA, HER TACKLE, ETC., The Liverpool and Great Western S. S. Co. (Limited), cl't.

SIR: The claimants appeal from the final decree of the court in this cause to the next circuit court term.

Dated April 3, 1878.

NASH & HOLT,
*Proctors for Def't, 50 Wall street, New York.*

To GEO. F. BETTS, Esq., *Clerk.*
E. H. LEWIS, Esq., *Proctor for Libellant.*

393 Circuit court of the United States for the southern district of New York, in the second circuit.

SERGEANT J. QUICK, LIBELLANT AND APPELLEE, and Frederick A. McKnight, colibellant and appellee,
*vs.*
THE STEAMSHIP NEVADA, HER TACKLE, &C., The Liverpool and Great Western Steam Company (Limited), claimant and appellant.

To the honorable the judges of the circuit court of the United States for the southern district of New York:

The appeal of the above-named claimant respectfully represents:

That on the 22d day of November, 1875, Sergeant J. Quick, the above-

named libellant, exhibited his libel in the district court of the United States for the southern district of New York against the said steamship Nevada, her tackle, apparel, furniture, steam-engines, and boilers, praying, among other things, for the reasons set forth in said libel, that the said court would pronounce for the claims in the said libel set forth, and would condemn the said steamship therefor.

That thereupon, and on the 22d day of November, 1875, the Liverpool and Great Western Steam Company (Limited), appeared in said suit, and entered and filed their claim to the said steamship, and a stipulation for the costs of said suit, pursuant to the course and practice of said district court, and a bond in the sum of twelve thous-
394 and dollars, in accordance with the acts of Congress in that behalf, and the practice of said district court.

That on the 17th day of December, 1875, the said claimant of said steamship filed its answer to said libel in said district court, praying that the said court would pronounce against the said libel, and condemn the libellants in costs.

That by an order of said district court dated the 5th day of March, 1877, it was ordered that Frederick A. McKnight be allowed to intervene in this suit as colibellant.

That said cause came on to be heard before the honorable Samuel Blatchford, judge of the said district court, on the 19th day of June, 1877, and the trial thereof was continued upon the 20th and 21st days of June, and the 17th, 18th, and 19th days of October, 1877, and the said judge, having duly considered the testimony adduced by the respective parties, afterwards, on the 30th day of November, 1877, made a decree in said cause whereby it was decreed that the libellant and colibellant should recover in this action against said steamship, her tackle, &c., the damages by them sustained by reason of the collision in the libel set forth, with their respective costs, and whereby it was referred to a commissioner of said district court to ascertain the amount of said damages respectively, and to report thereon to said district court.

That under said decree a reference was had to Geo. F. Betts, esq., a commissioner of said court, to ascertain the amount of such damages.

That by the report of such commissioner, dated the 19th day of February, 1878, it was reported to said court that the aggregate amount of damage sustained by Sergeant J. Quick, the libellant, by the collision aforesaid, including interest, amounted to four thousand two hundred and eighty-nine dollars and seventy-two cents ($4,289.72), and by Frederick A. McKnight, the colibellant, amounted to eight thousand one hundred and nine dollars and sixty-four cents ($8,109.64).

395 That by exceptions dated and filed February 19th, 1878, the claimant duly excepted to said commissioner's report, upon grounds stated therein at length, and by exceptions dated February 28th, 1878, the libellant, Sergeant J. Quick, excepted to said report upon certain other grounds therein stated.

That the hearing upon said exceptions came on before Hon. Samuel Blatchford, judge of said court, on March 2d, 1878, and on the 25th day of March, 1878, the said exceptions by libellant, and also by claimant, were overruled, and the said report confirmed by said district court by the final decree thereof; by which final decree it was adjudged that said libellants recover in this action against the said steamship Nevada, her tackle, &c., the sum of $4,289.72, with interest and costs, amounting altogether to the sum of $4,802.80, and that the said steamship be condemned therefor, and also that said colibellant recover in this ac-

tion against said steamship the sum of $8,109.64, with interest and costs, amounting altogether to $8,195.59, and that said steamship be also condemned therefor.

And this appellant is advised and insists that said decree is erroneous, inasmuch as said libellant and colibellant were not, nor was either of them, entitled to said damages, or any damages, but said claimant was entitled to have said libel dismissed with costs in that behalf.

And this appellant, for this and other reasons, appeals from the whole and each and every part of said decree in favor of said Sergeant J. Quick, and of said Frederick A. McKnight, to the next circuit court to be held in said district, and upon said appeal the said appellant intends to have said cause heard anew in the circuit court, on the pleadings and proofs in the district court, and new and further proofs to be introduced in the said circuit court, and they pray that the said decree may be reversed, or such other decree thereupon be made as
396 to said circuit court shall seem just, and that the appellees be condemned to pay the appellants their costs and damages in the premises.

New York, April 10th, 1878.

NASH & HOLT,
*Proctors for Appellants.*

S. P. NASH,
*Advocate.*

Know all men by these presents that we, The Liverpool and Great Western Steam Company (Limited), as principal, and William Sloane and John Sloane, of New York City, as sureties, are held and firmly bound unto Sergeant J. Quick, of Geddes, the State of New York, and Frederick A. McKnight, of Buffalo, in said State, in the sum of twenty-seven thousand dollars, to be paid to the said Sergeant J. Quick and Frederick A. McKnight, in their and each of their executors, administrators, or assigns, for the payment of which well and truly to be made we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated the day of April, in the year of our Lord one thousand eight hundred and seventy-eight.

Whereas The Liverpool and Great Western Steam Company (Limited,) as appellant, has appealed to the circuit court of the United States for the southern district of New York, in the second circuit, from a decree of the district court of the United States for the said southern district, bearing date the twenty-fifth day of March, 1878, in a suit in which Sergeant J. Quick, as libellant, and Frederick A. McKnight, colibellant, against the steamship Nevada, her tackle, apparel, &c., The Liverpool and Great Western Steam Company (Limited), claimant:
397 Now, therefore, the condition of this obligation is such that if the above-named appellant, The Liverpool and Great Western Steam Company (Limited,) shall prosecute said appeal with effect and pay all damages and costs which shall be awarded against it as such appellant therein if it shall fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

LIVERPOOL & GREAT WESTERN STEAM CO.,
By WM. H. GUION, *Att'y.* [L. S.]
WILLIAM SLOANE. [L. S.]
JOHN SLOANE. [L. S.]

Sealed and delivered and taken and acknowledged this 12th day of April, 1878, before me.

GEORGE F. BETTS,
*U. S. Commissioner.*

UNITED STATES OF AMERICA,
*Southern District of New York, ss:*

William Sloane and John Sloane, being severally duly sworn, doth depose and say, each for himself, that he resides in the southern district of New York, the said William Sloane at 13 West 57th st., in the city of New York, and the said John Sloane at 21 West 45th st., New York City; that he is worth the sum of fifty-four thousand dollars over and above all his just debts and liabilities.

WILLIAM SLOANE.
JOHN SLOANE.

Sworn to this twelfth day of April, A. D. 1878, before me.

GEO. F. BETTS,
*U. S. Commissioner.*

This bond approved as to form and amount and sufficiency of surety. Dated New York, April 12th, 1878.

SAMUEL BLATCHFORD.

398 U. S. district court.

SERGEANT J. QUICK
*vs.*
THE STEAMSHIP NEVADA, HER TACKLE, &C.

BLATCHFORD, J.

The libel in this case is filed by Sergeant J. Quick, as master and owner of the canal-boat Kate Green, for himself and for F. A. McKnight, against the steamship Nevada. The Kate Green and a cargo of corn on board of her were sunk in the slip between Piers 46 and 47, North River, in the city of New York, on the 27th of September, 1871, by a collision between her and the Nevada. The cargo was insured by the Western Insurance Company of Buffalo, which paid the loss, and its interest is vested in McKnight. The Nevada, a screw steamer, was moored at the north side of Pier 46, lengthwise of the pier, with her bow towards the river, and about 3 p. m., in full daylight, she steamed from her berth and went out and down the river and out to sea. The Kate Green was in the slip and was by the suction caused by the revolution of the screw of the Nevada drawn into contact with the blades of the screw as it revolved, so that the blades made holes in the bottom of the Kate Green and let in water, which caused her to sink with her cargo in a very short time. No person on board of the Nevada knew of the occurrence until she reached Liverpool, which was her destination. The libel alleges that the Kate Green was properly and securely moored and fastened, and that the collision occurred through the negligence of those in charge of the Nevada, and not through any neglect on the part of the Kate Green, her master and crew. The
399 libel claims for a total loss of the canal-boat and her cargo.

The answer alleges that the Kate Green was made fast by her bow only to a floating grain-elevator which lay alongside, and to the south of a steamer which was lying at the south side of Pier 47; that the stern of the Kate Green was not fastened to anything; that be-

tween the Kate Green and said steamer there were two canal-boats and another elevator; that the Kate Green remained thus made fast until the hour arrived for the Nevada to sail; that her master was notified of the approaching departure of the Nevada and was warned that the boat was not properly moored and was exposed to danger from the departure of the Nevada; that notwithstanding said warning he neglected to take the steps necessary to secure the boat; that the Nevada at the hour appointed left her berth, and moving slowly and carefully proceeded out into the river; that previous to and while so leaving her berth the steam-whistle was blown, the bells on deck were rung, and all usual and proper precautions were taken to announce said departure and to avoid collision with the several lighters and canal-boats lying in the slip; that as the natural and ordinary result of the movement of the Nevada through the water, and of the action of her screw, the water was sucked or drawn towards the Nevada, and the stern of the canal-boat so allowed to remain unfastened was thereby drawn over to the side of the Nevada and struck against the Nevada with a violent blow; and that the collision was occasioned solely by the negligence of the master and crew of the Kate Green and by reason of her said improper and insufficient mooring.

The fair reading of the answer is that the situation and insufficient mooring of the Kate Green were seen and known by those on board of the Nevada; that the Kate Green was warned in respect thereto; that she neglected to moor herself more securely; that after such
400 warning was given those on the Nevada saw that the Kate Green did not moor herself more securely, and saw that she continued to be insufficiently moored; and that, nevertheless, the Nevada, with full knowledge that the natural and ordinary result of the action of her screw as she would move ahead would be to suck or draw the water and with it the unfastened portion of the Kate Green over to the Nevada, put her screw in motion and kept it in motion until the collision occurred in consequence of such drawing over of the Kate Green until she struck the Nevada. A clearer case of negligence on the part of the Nevada could not well be set forth.

Much evidence is given as to the mooring of the Kate Green—as to whether she was fastened at all by lines to anything, and as to how she was fastened if she was fastened. I deem it unprofitable to discuss or determine those questions, and many other questions as to which evidence was given. The case is easy of solution on plain propositions.

If the Kate Green was loose in the slip and not fastened at all her condition ought to have been seen by and known to those on the Nevada, and it was negligence in them to set the screw of the Nevada in motion under such circumstances that the Kate Green could be drawn over against the Nevada by the suction of the screw of the Nevada. And this is true whether the Kate Green was warned or not, and whether, when warned, she was loose or was only insufficiently fastened. And it is true whether the warning came from the Nevada or from elsewhere. Indeed, an unheeded warning from the Nevada, given before the Nevada set her screw in motion, so far from relieving the Nevada from fault only serves to make her fault in starting her screw more clear, as showing that she had her attention called to the perilous condition of the Kate Green and yet set her screw in motion.

If the Kate Green was fastened she was so fastened that she was at such a distance from the Nevada that after she began to be
401 drawn over by the suction of the moving screw of the Nevada

there was abundant time for the Nevada to have stopped her screw and avoided the collision, if there had been a proper lookout kept in the proper place on board of the Nevada. The fact that no one on board of the Nevada knew or heard of the accident till she had crossed the ocean tells the whole story. It is abundantly proved that as the Kate Green was being drawn over by the suction of the moving screw of the Nevada, the Nevada was hailed from the Kate Green to stop her screw, but no heed was paid to the hail by the Nevada, because there was no person in a position on the Nevada to hear the hail.

Whatever observation was made by those on the Nevada of the position of the vessels in the slip preparatory to the sailing of the Nevada, and whatever warning she gave by any hails to any boat in the slip, were made and given, on the evidence, at a time before the Kate Green had come into the slip. Indeed, the answer does not aver that any oral notice or hail or warning was given to the Kate Green by any one on board of the Nevada.

As there was fault on the part of the Nevada, causing damage to the cargo of the Kate Green, and as the Nevada alone is sued in this suit for such damage, and as no fault, if any, of the Kate Green, can be imputed to the cargo, there would have to be a decree against the Nevada in respect to the cargo, even if the Kate Green also were found to be in fault for the collision.

As to the boat herself, I do not find that she was in fault. If she was loose, not fastened, she was not in fault for remaining so, whether warned or not, because it was the duty of the Nevada to see her condition and not to put her screw in motion. If the Kate Green was fastened, she was fastened at a distance from the Nevada which allowed abundant time, if her fastenings parted, for the Nevada, with a proper lookout, to stop her screw after the Kate Green began to be
402 drawn over. In either view, the Kate Green in fact hailed the Nevada, after the suction began to take effect, in season for the Nevada to have stopped her screw and saved the collision, if an officer of the Nevada had been stationed in a proper place to observe the condition of the Kate Green and to hear the hail.

There must be a decree for the libellant as to both boat and cargo, with a reference to ascertain the damages.

R. D. Benedict and E. H. Lewis, for the libellant; S. P. Nash, for the claimants.

(Endorsed:) U. S. district court, southern district of New York. Sergeant J. Quick et al., libellant & appellee, vs. The Steamship Nevada, her tackle, &c., The Liverpool and Great Western Steam Co. (Limited), claimant & appellant. Apostles. U. S. circuit court. Filed May 15, 1878. John I. Davenport, clerk.

403 United States circuit court, southern district of New York. In admiralty.

THE LIVERPOOL AND GREAT WESTERN STEAM Company, appellant, *ads.* SERGEANT J. QUICK ET AL., APPELLEES.

Take notice that on Saturday, May 25th, 1878, at 2 o'clock in the afternoon, at the office of the undersigned, a commissioner, duly appointed

by this court, at No. 71 Wall street, New York City, the testimony of John Johnson, and of such other witnesses as may then and there be produced, will be taken to be used as further proofs upon the appeal herein, pursuant to the rules and practice in admiralty; and you are hereby notified to be present at the taking of the same and to put interrogatories if you think fit.

Dated New York, May 24, 1878.

EDWARD L. OWEN.

To EUGENE H. LEWIS, Esq.,
*Proctor for Appellees.*

404 EDWARD DUFFY, a witness for appellant, examined before Edward L. Owen, esq., commissioner, at 71 Wall street, N. Y., on May 25th, 1878, having been duly sworn, testified as follows:

I am 33 years of age; I live in Liverpool, England; my business is a mariner; have been in that business 18 years; I am now connected with the Montana, one of the steamers of the Liverpool and Great Western Steam Company (Limited), commonly called the Williams & Guion Line of New York; my position is chief officer; I am familiar with the slip, Pier 46 and 47, North River; I know the steamships Nevada and Queen.

1. Q. It appears in evidence in this case that the width of the slip between Piers 46 and 47 is 205 feet; that the width of the Nevada is 43 feet and four inches; of the Queen 42 feet four inches; of the elevator Metropolitan 24 feet, and of canal-boats from 16 feet to 17 feet four inches wide. Assume that the steamship Nevada lay at her regular berth, Pier 46, with her bow 13 feet from the end of the Pier; that the steamship Queen lay at her regular berth at the south side of Pier 47, with the end of her bowsprit 20 feet back from the end of the pier; that the elevator Metropolitan lay alongside the Queen, opposite the stern-hatches; that two or three canal-boats lay alongside and outside of the Metropolitan; that the elevator Scotia, also 24 feet wide, lay alongside and opposite one of the bow-hatches of the Queen; that the Scotia was unloading, and one canal-boat lay alongside the Scotia being unloaded; that a tug-boat lay loose in the slip, about opposite the Scotia and near the canal-boat being unloaded; that there were several small craft lying in the slip near the bulkhead; that under such circumstances the Nevada started to leave her dock and proceed to sea, about two hours after low water at Pier 46. Suppose that immediately after the Nevada started the outermost canal-boat opposite the Metropolitan should break loose and begin to drift towards the Ne-
405 vada, and that the captain of the canal-boat, apprehending a collision, should call out to an officer on the Nevada to stop the Nevada's wheel, state whether or not in your opinion it would be dangerous to do so.

A. It would be dangerous to stop her wheel under such circumstances.

Q. In what would the danger consist?

A. Because the flood-tide would catch her bow, and the vessel having no steerage way, her bow would be canted up the river and her stern over and on top of the other vessels alongside the Queen.

Q. Under such circumstances would you, hearing such a hail, and believing that the canal-boat would be struck by the blades of the propeller, give orders to stop the Nevada's wheel?

A. I would certainly keep steerage way on my ship.

Q. Can you manage such a steamer in such a slip in any other way than by keeping steerage way on her?

A. No.

Q. In case, under such circumstances, the Nevada had been stopped, was it or not probable that greater damage would be caused by such stoppage than by going on, in your opinion?

(Objected to.)

A. In my opinion the risk would be much greater in stopping than in keeping steerage way.

Cross-examined:

I have been attached to the Nevada—12 months ago—for one voyage; across the tide she makes three or four knots.

Q. Did you ever test her to see how soon after starting her screw she would attain a speed of three or four knots?

A. No, sir.

406 Q. Did you ever test her to see how far she would have to move after starting her screw before she attained that speed?

A. Not in that ship.

Q. Did you ever test her to see in how much time her engine could be stopped when in full motion?

A. Not in that ship.

Q. You have given your judgment that, under certain circumstances stated, it would be dangerous to stop the screw; do you mean that it would be dangerous to the steamer?

A. Dangerous both to the steamer, the lighters, and the Queen.

Q. How would it be dangerous to the steamer?

A. The steamer would probably get on shore on a bank that is between the two steamers, and the lighters would be crushed by the steamer's quarter, which would fall over on top of them.

Q. Have you any personal knowledge of the existence and character of the bank of which you speak?

A. Yes.

Q. Do you mean to say there was in that slip in September, 1871, any bank which would bring a steamer up?

A. I was not here in 1871; I know there was in 1874.

Q. Then you have no knowledge as to the condition of the slip in 1871?

A. No.

Q. If there was in that slip in 1871 a bank on which the steamer would get on shore as you say, would that bank bring her up so that she would not drift?

A. The weight of the steamer might probably break through the bank, but the steamer would probably loose her helm or rudder and propeller.

Q. So far as you have knowledge of the bank since you knew anything about it, is it not soft mud?

A. It is mud; we have some difficulty in hauling the bows of our steamer over it when she was light.

407 Q. Did you haul her over by lines from the pier?

A. We backed her astern, and then we hauled her over this bank by lines from the pier, by patent steam-wrench, and we understood that we hauled her over a part of this bank. The outside end is much shallower than at the bulkhead.

Q. I understand you to say that under the circumstances stated you would not stop the engine of the steamer, even if you knew that keep-

ing it in motion would destroy the canal-boat; is that what you mean?

(Objected to.)

A. I would not risk the uncertainty of a collision by stopping, with a certainty of damaging our own ship or the lighters.

Q. Suppose the collision with the canal-boat was not uncertain but certain, what then?

(Objected to.)

A. There is nothing certain until the collision happens.

(Question repeated.)

(Objected to.)

A. I have answered it.

Q. Supposing you knew that keeping the engine in motion would destroy the canal-boat under the circumstances mentioned?

(Objected to.)

A. It would be impossible to know before the collision happened.

Q. But suppose you did know, what then?

(Objected to.)

408 A. It is impossible to tell before the collision happened.

Q. You say that it would be impossible to tell until the collision with the canal-boat happened whether it would happen?

A. Yes.

Q. Would it be any more possible to tell whether damage would be caused to your ships or the other lighters by stopping?

(Objected to.)

A. Yes.

Q. Why is it possible to tell in one case and impossible in the other?

A. Because we knew it was flood-tide, setting her bow up the river and her quarter over on the bank on to the lighters moored alongside the Queen.

Q. Have you no other answer to give to that question, which is read over to you?

A. No.

Q. Whereabouts do you understand that the lighters you have spoken of as alongside the Queen were, with reference to the canal-boat that was struck?

A. Some alongside the fore-hatch of the Queen and some the after-hatch; I understand that the lighter that was struck was alongside the fore-hatch of the Queen.

Q. And you have given your testimony in this matter on that supposition?

A. No, sir; I have given it as to her being alongside the Queen and breaking adrift.

Q. But you have given your evidence on the idea that when she was alongside of the Queen she was abreast of the fore-hatch, have you not?

A. My idea is that she had been alongside the Queen, but that she was adrift when she was collided with.

Q. Have you not, in testifying, understood that the canal-boat
409 which was struck lay alongside of the fore-hatch of the Queen before she broke adrift?

A. If I did I said so without thinking; it ought to have been the after-hatch.

(Question repeated.)

A. No, sir.

Q. Did you understand, while you were testifying, that the canal-

boat or lighter that was struck was alongside the after-hatch of the Queen?

A. The after-hatch, I so understood.

Q. Why did you say that you understood she was alongside the fore-hatch?

A. I corrected myself and said she was alongside the ship.

Q. Do you know what is the effect on the water of a slip of setting in motion in the slip the screw of a vessel as large as the Nevada?

A. Yes; to draw bodies towards the ship; towards the part where the propeller was.

EDWARD DUFFY.

Sworn to before me this 25th day of May, 1878.

EDWARD L. OWEN,

*U. S. Commissioner for the Southern Dist. of New York.*

JOHN W. SANSOM, a witness for appellant, examined before Edward L. Owen, commissioner, at 71 Wall street, N. Y., on May 25, 1878, having been duly sworn, testified as follows:

I am 33 years of age; I live in Brooklyn, N. Y.; my business is seaman; have been so 19 years; I am now commanding the steamship Andes; have been in command of steamships for 3 years.

410 Q. (Witness shown chart Ex. 1, Oct. 17, 1877. Question number 1 put to witness Duffy repeated to the witness.)

A. I consider there would be a great deal of risk attending the stopping of her engines after her lines were let go at that time of the tide.

Q. In what would the danger consist?

A. The tide—flood-tide—catching the vessel's bow and carrying it towards the opposite pier—towards the Queen, and if she had not sufficient headway to carry her out of the slip, bringing her quarter in against her own pier, and perhaps damaging her propeller or carrying her bodily over against the Queen and boats alongside.

Q. In your opinion as a seaman, which course, under these circumstances, would be proper to take?

A. To go ahead at full speed.

Cross-examined:

Q. The danger, as I understand you, would arise from the effect of the flood-tide?

A. Yes.

Q. Do you know the Nevada?

A. I do.

Q. How does the Nevada compare with the Andes?

A. The Nevada is much the larger ship—larger in tonnage, in length; probably 50 feet difference. I have commanded the Andes about six months; I have, during that time, taken her 6 times in and out of the same slip; that slip is Pier 51, old number; I have taken her in and out at different times of tide; I have never put the Andes into the slip on a flood-tide; only on the ebb; she lies on the upper side; I back her in; I have never gone out with her on flood-tide; I never have gone out with the Andes on a flood-tide.

Q. Did you ever put a steamer into her berth on a tide which would carry her away from the pier alongside of which she was to lie?

411 A. Yes; the Ætna on several occasions; on one occasion I had to reverse my engines at full speed after I got part way in.

Q. On such occasions when do you get out the first line to the pier?

A. If I was docking the Andes on the flood-tide I would land on our own pier; I would get a line from the pier above to her bow and a spring from aft to keep her stern from falling down on the pier astern; then I would run our lines down the dock the ship was going to lay at, to pull her stern around.

Q. Then, as I understand it, while you were backing her in her slip you would have lines out to the pier at the upper side at which she was to lie?

A. Yes.

Q. Those lines would hold her up against the flood-tide, wouldn't they?

A. Yes.

Q. Supposing a steamer lying on the upper side of a pier on the North River proposed to leave her berth, the tide being flood, would there be any difficulty in her holding by lines on her own pier so as to bring herself alongside of the end of her pier in the same position in which she is when she lands on coming in?

A. There would be.

Q. What would be the difficulty?

A. You could not handle a ship in the same way going out as coming in; the tide would catch her bow, and you could not bind her so close to the dock as in coming in.

Q. Did you ever try such an experiment?

A. No; never saw it tried; I am supposing that the ship has no tug-boats.

Q. Suppose she has tug-boats?

412 A. If she had sufficient tug-boats, then she could do it.

J. W. SANSOM.

Sworn to before me this 25th day of May, 1878.

EDWARD L. OWEN,

*U. S. Commissioner for the Southern Dist. of New York.*

Examination adjourned to Tuesday, May 28th, 1878, at 10 o'clock a. m.

MAY 28TH.—Pursuant to adjournment parties appear. Examination proceeds.

DAVID WILLIAMS, a witness for appellant, examined before Edward L. Owen, esq., commissioner, 71 Wall street, N. Y., on May 28th, 1878, having been duly sworn, testified as follows:

I am 31 years of age; I reside in Dunellen, New Jersey; I am a shipmaster; I am now master of the steamship Alps, of the Atlas Steamship Company; have been such for four years; have been a mariner about sixteen or seventeen years.

Q. (Question number 1 put to witness Duffy repeated to this witness. Diagram No. 1, Oct. 17, 1877, shown witness.)

A. I think it would be dangerous for the Nevada to stop under those circumstances.

Q. In what would be the danger?

A. The danger would be that the lines being cast off, the ship once started, the flood-tide would catch her by the bows and carry her bow over against the next dock and the vessels between, and her stern into her own dock.

Q. Under such circumstances, what would you have done if in command of the Nevada?

413 A. I should have kept her going,

Cross-examined:

My vessel is about 1,800 tonnage; length, 305 feet; beam 32 6 in.; propelled by a screw propeller; I have commanded her 2½ years; pier is at 51, North River; our ships lie on the north side of the pier, about 80 or 100 feet wide; the width of the slip is about 130 feet; I have left our pier under similar circumstances to those in this case; my vessel does not carry grain; the White Star boats do.

Q. Please describe as you understand the position of the vessels in the slip at the time of the collision between the Nevada and Kate Green.

A. The Nevada on the north side of the pier, and the Queen on the south side, with the canal-boats lying on the side of the National steamer; there were four canal-boats lying alongside the National steamer, at her after hatch, and two at the forward hatch; the four boats were alongside of each other, forming a continuous row, and the outside boat was injured; the injured boat was about 30 feet from the Nevada when she started; the two canal-boats were lying alongside each other at the forward hatch of the Queen; there were no elevators that I knew of; I consider the elevator as one of the four boats, and also one of the two forward; the Nevada was 10 or 15 feet from the end of the pier—probably 5 to 10 feet.

Q. How far would the Nevada have to go in order to acquire steerage way, or a ship as large as the Nevada?

A. A ship will answer her helm as soon as her propeller is started and lose it if the propeller be stopped; she acquires a steerage way at once; the danger that I spoke of would not exist except for the tide.

Q. Take the positions of those vessels as you understand them,
414 you would never place yourself in the position of choosing either of those two alternatives, would you?

A. I would try not to; I would not take either of them.

Q. Is it necessary for a steamship that is about to leave for sea to take that risk ever?

A. Not if she knows she is going to do damage; not if a flat-boat gets adrift in the slip.

Q. Are there not ways of taking your steamers, and such a steamer as the Nevada, out of a slip such as the one at 46 and 47 without incurring any risk of doing damage by reason of collision?

(Objected to.)

A. Yes.

Q. Describe some of them.

A. By going ahead after the ship is started and keep on going as the Nevada did, as long as the flat-boats keep themselves in the position they were in when the ship started.

Q. You consider that the Nevada, then, in pursuing the course that she did on this occasion, incurred no risk whatever of a collision.

A. She did, on account of the flat-boats getting adrift in the slip and coming on her quarter.

Q. Are there any other ways of going out without incurring the risk of a collision?

A. Not that I know of, unless by getting a tug-boat to tow him out.

Q. In that case is there any danger of damage by collision?

A. They may if the boats get adrift.

Q. But there is no commotion of the water in that case which would cause the canal-boats to break adrift?

A. No.

415 Redirect:

Q. Do you ever know of a steamer being taken out of New York with a tug?

A. No.

D. WILLIAMS.

Sworn to before me this 28th day of May, 1878.

EDWARD L. OWEN,

*U. S. Commissioner for the Southern District of New York.*

Examination adj'd to May 31, 1878, to 10 o'c'k a. m.

MAY 31.—Parties appear pursuant to adjournment. Ex. adj. to June 1st, at 12 m.

JUNE 1st.—Pursuant to adjournment parties appear. Examination proceeds.

JOHN PHELAN, a witness for appellant, examined before Edward L. Owen, esq., commissioner, at 71 Wall street, New York, on June 1st, 1878, having been duly sworn, testified as follows:

I am 35 years of age; I reside in Brooklyn, New York; I am a Sandy Hook pilot; I have been so 12½ years; I went to sea before that as mariner 6 or 7 years; I know the steamships Nevada and the Queen, and Piers 46 and 47, North River; I have had much experience as Sandy Hook pilot in taking vessels out to sea, and I have been on board in taking them out of slips; I have taken them out myself; the pilot usually takes charge when she is clear of the dock; until then usually the captain is in charge

Q. (Diagram Claimant's Ex. 1, Oct. 17, shown to witness. Question No. 1 put to witness Duffy repeated to this witness.)

A. I think it would be a dangerous expedient to stop that ship, because there would be danger of the ship's propeller striking the dock at Pier 46; if she was stopped any length of time it would fall down on the Queen's bow.

Q. If you were in command of the Nevada under such circumstances what would you do?

A. Kept my ship going ahead.

416 Q. In case an officer on the stern had heard such a hail do you know what would have to be done in order to stop the ship?

(Objected to.)

A. Word would have to be passed forward to the captain, and from the captain to the officer attending the telegraph. The bridge is 200 feet from the stern of the Nevada, as near as I can say; the dial was situated, I should say, from 30 to 35 feet abaft the bridge, if she was the same as the Idaho. The man at the dial would turn the dial, and it would signal to the man in the engine-room to stop.

Q. Look again at the diagram. Assume that the boats in the slip are in the position thereon delineated, and that the distance from the outermost canal-boat, marked No. 3 on the diagram, is from 40 to 60 feet from the Nevada; that after the Nevada had started, and the canal-boat had broken loose and was drifting under the stern of the Nevada, a look-out or officer at the stern of the Nevada had attempted to have his screw of the Nevada stopped, in your opinion could it have been accomplished before the collision?

(Objected to.)

A. In my opinion, if that canal-boat was 60 feet from the Nevada, there would have been no occasion to stop; there would have been no collision with the vessels lying that way, the canal-boat being 60 feet away; that is my opinion.

Q. Assuming that it was near enough so that a collision could have occurred, in your opinion could the steamer's screw have been stopped under the circumstances stated in the preceding question in time to prevent a collision?

(Objected to.)

417 A. No; I don't think she could have been stopped in safety; my experience is with canal-boats that they are close to you when they notify you to stop.

Q. (Question repeated.)

A. I have answered that question once; she could not have been stopped in safety.

Cross-examination:

Q. Your duties as pilot begin after the ship is in the river?

A. Generally; not always.

Q. Have you ever taken the Nevada out from her berth into the river?

A. No, sir.

Q. Prior to the time you were licensed as a pilot what was your occupation?

A. Serving my time in a pilot-boat.

Q. How many times have you taken the Nevada out?

A. That I cannot say; I have piloted a great many ships, almost every steamer in that line; I can't say whether I piloted her once or a half dozen of times.

Q. You have never taken her out from her berth, or any of the other steamers, under the circumstances stated?

A. I think I have.

Q. I mean, by circumstances stated, a case where a steamer of the same size or larger than the Nevada was lying on the opposite side of the slip, elevators alongside of her, as shown in the diagram shown to you, and with canal-boats alongside the elevators; have you ever, under those circumstances, taken the Nevada from her berth, and been obliged to decide whether to stop her propeller in order to avoid a collision with one of the canal-boats or to go ahead in order to avoid another collision and, if so, state the circumstances when, and all about it, the names of the boats also?

418 A. No, I can't say that I have; I don't remember the canal-boats that were in the slip; no, I don't count them; I don't keep it in my memory.

Q. I understand you to say that if the canal-boat was 60 feet from the Nevada, there would have been no occasion to stop, since there could have been no collision; what is the ground for that opinion?

A. When that canal-boat was 60 feet from that steamer, as they are in that diagram, that they could not have collided.

Q. Why not?

A. Because the steamer would be going faster through the water than the suction would draw that boat over.

Q. How was the propeller of the Nevada situated?

A. At the stern.

Q. At the stern in what situation?

A. There is a counter hanging over it.

Q. How far is the extreme stern of the counter from the propeller?

A. I should say that the extreme after end of the steamer overhung the propeller 12 feet.

Q. About how wide is the propeller?

A. That's under water; I am no diver.

Q. If the tide had not been flood on the occasion spoken of, there would not have been the same danger would there?

A. There would be more, providing it was ebb-tide; if it had occurred two hours before, the ship would have gone out straight and would not have gone near the canal-boat, provided it was slack water.

Q. I understand from you that the suction produced by the Nevada would not have been great enought to draw these canal-boats from their moorings at a distance of 60 feet; suppose the stern of the Nevada had swung towards the middle of the slip as she went out, the suction in that case would have been much greater would it not?

419 A. That I don't know; I don't think the suction would have been as much.

Q. If her stern had been 120 feet off, the suction would have been greater on that theory, would it have not?

A. No greater; no.

Redirect:

In case the ship was swinging from the dock the water would drag from the dock; the ship drags the water towards us, not from her.

JOHN PHELAN.

Sworn to before me this 1st day of June, 1878.

EDWARD L. OWEN.
*U. S. Commissioner.*

THOMAS MURPHY, a witness for appellant, examined before Edward L. Owen, esq., commissioner, at 71 Wall st., N. Y., on June 1st, 1878, having been duly sworn, testified as follows:

I am 38 years of age; I reside at 243 11th street, South Brooklyn; I am a pilot, a Sandy Hook pilot; have been so 13 years; I have had much experience in taking out vessels from slips in the port of New York to sea; I know the steamers Nevada and Queen and Piers 46 and 47, North River.

Q. (Diagram Exhibit No. 1, claimant's, Oct. 17, shown to witness. Question number 1 put to the witness Duffy repeated to witness.)

A. I think it wouldn't have been right to stop the ship under those circumstances.

Q. Why not?

A. Afraid of doing damage to the steamer herself after once getting headway on the ship.

Q. Would there have been any other danger?

A. Yes, sir; falling on the Queen and the canal-boat off the Scotia.

420 Q. If you were in command of the Nevada under such circumstances what would you do?

A. Go ahead.

Cross-examination:

I have taken the Nevada out from her berth; I have been pilot of her 3 times, twice out and once in.

It is between 8 and 9 years ago since I took her out; I have not been

pilot of her since then; Captain Williams on those occasions took her out into the river.

When I bring them in I dock the steamers; that is invariable.

Q. Please describe the process.

A. Lay them on the end of the pier; whatever side of the dock you wish to put them, to lay your lines accordingly; generally use a spring line, bow line, and a quarter line, and then we work the engines according to the speed we want to back her into the dock to work her in on these lines.

If you want to go in stern first the spring line will lead aft aboard the ship; if you want to go in bow first the spring line will lead aboard the ship forward; by means of these lines we turn the ship and the propeller.

We cannot go in under those circumstances with a strong tide; we generally wait till the tide slacks; we can go in with a tide running two knots or less, or a little better; the slacker the tide the better for to get a ship in; that is the way they are always docked; we are not confined to steamers of this line, but to all the lines.

THOS. MURPHY.

Sworn to before me this 1st day of June, 1878.

EDWARD L. OWEN,
*U. S. Commissioner.*

421 WILLIAM FORSYTH, a witness for appellant, examined before Edward L. Owen, esq., commissioner, at 71 Wall street, N. Y., having been duly sworn, testified as follows:

I am 50 years of age; I live at Liverpool, England; I was the master of the Nevada in September, 1871, and I have previously testified in this cause; I have been master mariner about 17 or 18 years.

Q. Do you remember the condition of the slip, as to the craft in the slip particularly, on the afternoon the Nevada sailed, September 27th, 1871?

A. Yes.

Q. Assuming that the outermost canal-boat lying outside of the elevator at the stern-hatches of the Queen was or became loose, drifted across, and was struck by the propeller of the Nevada as it went out, state whether or not, in your opinion, it would have been dangerous to have stopped the Nevada's screw in order to prevent the collision after the Nevada started and before she had cleared the ship.

A. It would be dangerous to stop the ship after she had once started.

Q. Why?

A. Because after she had once started and gone out and projected beyond the wharf the tide would catch the ship and swing her up against Pier 47 and do damage to herself and everything else there.

Q. Under such circumstances can you retain control of the ship if she looses her headway?

A. No.

Q. If after the Nevada started you had learned that there was danger of a canal-boat being drawn under the stern of the Nevada and struck by the blades of the propeller would you have given orders to have stopped the screw?

A. That is an impossibility; that would depend upon circumstances as to how far we had proceeded; if she had just moved the engine we might have stopped, but if the ship had proceeded any distance or got any headway she would have to go.

422 Q. (Diagram Claimant's Ex. 1, Oct. 17, shown to witness.)

Assume that this diagram shows with substantial correctness the position of the vessels in the slip, and that the Nevada had proceeded far enough so that the canal-boat marked number 3 on the diagram was being drawn through the water towards the Nevada by the suction, would you or not then have stopped the Nevada?

A. Not if I had proceeded any distance. If the ship had only gone a few feet might have stopped, but not if she had proceeded 40 or 50 feet. I stood on the bridge when she went out. There was no one on board to order the screw to be stopped but myself. The bridge is about 200 feet from the stern of the vessel.

Cross-examination:

Q. Captain, after you have started your steamer on such an occasion as this you are practically in a helpless condition, are you not, as regards your intercourse with the other vessels lying around you?

(Objected to.)

A. You have only one way to act, that is to go ahead; if you don't go ahead do something else; you will surely do damage; you are in such a condition on all sides that you may do damage or suffer damage.

Q. And the science of seamanship has not yet been able to provide a method for meeting these difficulties?

A. I say the science of seamanship has and does avoid those difficulties.

Q. And that is the way you have suggested—going ahead?

A. There is no difficulty in taking a ship out of the dock if all precautions are taken.

(Question repeated.)

A. Yes, sir; all the necessary precautionary measures used.

423 Q. Then as the difficulty on this occasion was not met successfully, what inferences do you draw as to the——

A. There must have been carelessness on the part of the lighter in not being properly made fast by those in charge of them.

Q. Then there is no other way known of avoiding difficulties such as collision with canal-boat than to assume that they are properly moored and to go ahead after you have started your steamer?

A. Yes.

Q. Give us some instances.

A. Not to move your own engine at all; hire steam-tugs and get towed out; wait till high tide and slack water and heave her out with ropes.

Q. Are there any others?

A. Question is ridiculous; yes; wait for a fair wind, set your sails, and sail her out on slack water; the only object is to move your ship without moving your engines.

Q. Do you know of any other ways?

A. Question is ridiculous; you have had answers enough; I have no other answer to make.

Redirect:

Q. Did you ever know a steamer taken out from her dock in the port of New York when she was starting on a voyage?

A. No, I don't remember; it would be very unusual for a ship to do that.

Q. Is there a particular period of the tide at which the steamers of the Liverpool and Great Western Steam Company start?

A. Generally from two to three hours before high tide, in order to cross the bar at Sandy Hook at high water.

Q. Would it be practicable for the steamers of this line to leave their dock, upon entering on a voyage to Europe, at slack water?

424 A. Yes, sir; she would have to lay down the bay an hour or two; we sometimes do that.

WM. FORSYTH.

Sworn to before me this 1st day of June, 1878.

EDWARD L. OWEN,
*U. S. Commissioner.*

425 Schedule A annexed to deposition of Sherman S. Jewett. See apostles, folio 229.

United States district court, northern district of New York. In bankruptcy, No. .

IN THE MATTER OF THE WESTERN INSURANCE COMPANY, BANKRUPT. } Schedule A to be shown witness.

Know all men by these presents that whereas, by an order of the district court of the United States for the northern district of New York, in bankruptcy, duly made and entered in the above-entitled proceeding, at a session thereof held at the chambers of the district judge of said district, at the city of Syracuse, on the 21st day of July, A. D. 1874, Sherman S. Jewett, as the assignee of the above-named bankrupt, was authorized and directed to sell all of the assets and property of the said bankrupt at public auction, giving notice of the time and place of said sale by publishing such notice twice a week for four weeks previous thereto in the newspapers called the Daily Courier and the Commercial Advertiser, in the city of Buffalo;

And whereas notice of said sale was duly advertised in pursuance of said order to be held on the twenty-second day of August, 1874,

426 and on said sale, this day, had pursuant to said notice, the property hereinafter described, being part of the assets and property of said bankrupt, was sold and struck off to F. A. McKnight for the sum of twenty-five dollars, that being the highest sum bid therefor, and he being the highest bidder for the same.

Now, therefore, in consideration of the premises and of the sum of twenty-five dollars, to me in hand paid by said F. A. McKnight, I, Sherman S. Jewett, as assignee of the property, estate, and effects of the Western Insurance Company, a bankrupt, do hereby sell, assign, transfer, and set over unto said F. A. McKnight the following-described property, to wit: All claims and demands against the Williams & Guion Steamship Co. for destruction of cargo of canal-boat Kate Green ($5,860.51), being a portion of the property and assets of the said bankrupt, giving and granting unto said F. A. McKnight full power and authority, at his own costs and *and* charges, and in his own name, to sue for and collect the said demand, and the moneys due and to grow due thereon, with the same force and effect as I might have done had these presents not been made.

In witness whereof I have hereunto set my hand and seal as such assignee this 22d day of August, 1874.

S. S. JEWETT,
*Assignee of the Western Insurance Company, Bankrupt.*

STATE OF NEW YORK,
*Erie County, City of Buffalo, ss:*

On this 25th day of August, 1874, before me personally came Sherman S. Jewett, to me known to be the same person named and described in the foregoing instrument, and acknowledged to me that
427 he had executed the same as the assignee in bankruptcy of the Western Insurance Company, for the uses and purposes therein mentioned.

[L. S.] JOHN C. GRAVES,
*Notary Public.*

At the execution of a commission for the examination of witnesses, wherein Sergeant J. Quick is libellant, against the steamship Nevada, her tackle, &c., claimant, this paper writing was produced and shown to Sherman S. Jewett, and by him deposed unto at the time of his examination before

GEO. J. SICARD,
*Commissioner.*

428 Circuit court of the United States for the southern district of New York, in the second circuit.

SERGEANT J. QUICK, LIBELLANT AND APPELLEE, and Frederick A. McKnight, colibellant and appellee,
*vs.*
THE STEAMSHIP NEVADA, &C., THE LIVERPOOL and Great Western Steam Company (Limited), claimant and appellant.

*Bill of exceptions by claimant and appellant.*

This cause came on for trial before the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, sitting as circuit justice in the circuit court of the United States for the southern district of New York, in the second circuit, at the city of New York, on the seventeenth day of June, 1879, on the appeal by the claimant from the final decree of the district court of the United States
429 for the southern district of New York, whereby it was adjudged that Sergeant J. Quick, the libellant, recover in this action $4,802.80, and Frederick A. McKnight, the colibellant, also recover in this action $8,195.59, and that the said steamship Nevada, her tackle, &c., be condemned therefor.

The proctor for the libellants read the libel and a petition by said Frederick A. McKnight to intervene in said cause, and the order by said district court made, granting the prayer of the said petition, and the proctor for the claimant read the answer, as the same are contained in the apostles transmitted from said district court to said circuit court.

The proctor for the libellants then put in evidence the testimony taken and the depositions read on behalf of the libellants in the district court, as the same are contained in said apostles, it being considered that the proctor for the libellants read the direct examination and
430 the proctor for the claimant the cross-examination.

The proctor for the claimant then put in evidence the testimony taken and the depositions read on behalf of the claimant in the

district court, as the same are contained in said apostles, it being considered that the proctor for the claimant read the direct examination and the proctor for the libellants the cross-examination.

The proctor for the claimant then put in evidence the depositions of the following witnesses taken in the circuit court, and on file in the circuit court, viz: Edward Duffy, John W. Sansom, David Williams, John Phelan, Thomas Murphy, and William Forsyth, it being considered that the proctor for the claimant read the direct examination and the proctor for the libellants the cross-examination.

The testimony was then closed.

The proctors for the libellants and claimant thereupon submitted to the court on their behalf, respectively, and duly requested the
431 court to find the following proposed findings of fact and conclusions of law, respectively:

The appellees herein, by Eugene H. Lewis, their proctor, hereby propose findings of fact and conclusions of law, as follows:

FINDINGS OF FACT.

1. On the 27th day of September, 1871, at about three o'clock in the afternoon, the steamship Nevada lay in her berth, on the north side of Pier 46, North River, her bow pointing towards the river and her stern towards the bulkhead. On the opposite side of the slip or basin, which was between Piers 46 and 47, and on the south side of Pier 47, lay the steamship Queen, her bow also towards the river and her stern towards the bulkhead. Alongside of the Queen lay two floating grain-elevators, the Scotia and the Metropolitan, the former lying at the forward hatchway or towards the bow of the Queen and the latter at the after hatchway or towards the stern of the Queen. The canal-boat Sarah and Madonna lay alongside the elevator Metropolitan, and was being unloaded upon the Queen. The canal-boat C. H. Hart also lay alongside the Metropolitan, with her bow towards the bulkhead, and lapping over the end of the elevator, and her stern being against the end of the Sarah and Madonna. The Hart lay there awaiting her turn to be unloaded, and was fastened by two lines to the Metropolitan and the Queen, her stern line being a new line 5 to 5½ inches in circumference, and being made fast to the Metropolitan, and her bow-line, also a new line about 7 to 7½ inches in circumference, being made fast to the deck of the Queen. There were two lighters up at the bulkhead, astern of the Nevada.

2. Shortly before three o'clock, and while the vessels in the slip were in the position stated above, the canal-boat Kate Green was towed into the slip by the tugboat Jacob Sinex, on the port side of the tugboat, and was brought by the tug alongside of the canal-boat Hart, her bow being towards the bulkhead. Quick, the master and owner of the Green, made his bow line fast to the bow of the Hart, and his steersman, Merritt, made the stern line of the Green fast to the stern of the Hart. Simultaneously, or nearly so, with the Green's making fast to the Hart the tugboat cast off from the Green and backed out towards the mouth of the slip, and the Nevada began to move her screw and to proceed upon a voyage to Liverpool.

The tug had not time to back out of the slip before the Nevada started, but lay in the space between the two elevators till she had gone out.

432 3. No one on board the Green knew of the approaching departure of the Nevada until they became aware of her leaving,

her berth by the commotion created by her screw propeller in the water of the slip, and no one in charge of the Nevada saw the Green come into the slip.

4. As the Nevada proceeded upon her course out of the slip, her stern swung towards the middle of the slip; the water in the slip became muddy and riled, and was in a commotion such as was unusually great, even in cases of the departure of steamships.

5. The commotion in the water caused by the steamer's propeller became so great as to cause the line by which the Hart's bow was fastened to the Queen to break, and to leave the two canal-boats, the Hart and the Green, adrift at one end.

6. After the breaking of the Hart's bow-line the suction caused by the action of the steamer's screw propeller drew the canal-boats towards the Nevada's stern, which was itself swinging towards the middle of the slip, and, as they neared each other, Quick, the master of the Green, hailed an officer standing on the stern of the Nevada on her deck, and called loudly to him to stop his wheel, for God's sake. No attention was paid to the hail, however, by any one on board the Nevada, and the two vessels collided. The Green was struck below her water-line by the flanges of the Nevada's screw, from about a dozen feet back of her bow, all the way aft to her stern, her whole side being crushed in and her bottom loosened, so that she filled with water and sank in the the slip within half an hour, the Nevada proceeding on her way out to sea.

7. Immediately after the hail given to the Nevada by the master of the Green to stop his wheel, a hawser, which led from the port side of the Nevada to the pier, some distance back to the stern of the ship, came up taut and broke about the middle, causing the headway of the Nevada to be checked or stopped for a short time; but the Nevada's engines were not stopped at any time after she started, either before or after the collision, while she remained in the slip.

8. Whatever bells were rung, or whistles blown, or hails given, or observations made from the Nevada previous to her sailing occurred before the arrival in the slip of the boat Kate Green.

9. No personal notice was given to any one on the Green of the Nevada's approaching departure.

10. No one in charge of the Nevada saw the parting of the Hart's line, or the drawing together of the Green and Nevada, or the sinking of the Green by the propeller, and no one in charge of the Nevada knew of the collision with the canal-boat until the arrival of the steamship at Liverpool.

433 11. There was ample time after the cry of the master of the Green to stop the Nevada's wheel, and for the lookout on the stern of the Nevada, had one been there, to have signalled the engineer, and to have stopped the working of the propeller.

12. The tide was flood at the time of the collision.

13. The Nevada could have been towed by a tugboat from her berth into the river, and thus have avoided all danger of collision with any of the vessels in the slip.

14. The length of Pier 47 was 587 feet; the width of the slip between piers 46 and 47 was 206½ feet at bulkhead; the length of the Nevada 345 feet, her beam 43.4 feet; the length of the Queen 381.1 feet, her beam 42.4 feet; the length of the Kate Green 97 feet, and her width 17 feet; the length of the C. H. Hart 96 feet, and her width 17.4 feet; and the length of the elevator Metropolitan was about 90 feet, and her width

24 feet, and the space between the Kate Green and the Nevada before the latter started her propeller was about 62 feet.

15. The Kate Green had a cargo of corn on board at the time of the collision; she sunk with her cargo in the slip and was raised during the week succeeding the collision, but both canal-boat and cargo were a total loss.

16. The Kate Green was built in 1867 at a cost of between $3,500 and $3,600; was purchased by Quick in 1870 for $3,200, and during the year that he owned her repairs of a permanent nature were put upon her equalling in value the deterioration of ordinary use, and at the time of the collision was worth, because of the high freights at that time, at least 3,200.

17. At the time of the collision there was due Quick for freight $65, and there was furniture on board the Kate Green belonging to him, which went down with the boat, of the value of $35.

18. The cargo was owned by Erastus S. Brown and M. F. James & Co., and was insured in their favor by the Western Insurance Company. The insurance company paid to the owners of the cargo for its total loss the sum of $5,860.51, which was its market value on the day of the collision.

19. On the 1st day of November, 1871, the insurance company was adjudged a bankrupt by the district court of the United States for the northern district of New York, and afterwards by an investment of assignment executed by Joseph L. Fairchild, register in bankruptcy, Sherman S. Jewett was constituted the assignee of the company. On the 22d day of August, 1874, the said Jewett, as such assignee, and under authority and in pursuance of an order of said court, entered on the 21st day of July, 1874, sold the claim for damages against the steamship Nevada and its owners, arising out of the collision with the Green, at public auction to the highest bidder, and Frederick A. McKnight, the colibellant, was the purchaser at such sale of said claim.

20. Those in charge of the Nevada were guilty of negligence, which caused the injury to and loss of canal-boat and cargo.

21. There was no contributory negligence on the part of those in charge of the Kate Green.

434 CONCLUSIONS OF LAW.

1. The right to recover for damage to the cargo of the Kate Green is vested in McKnight, the colibellant.

2. The libellant and colibellant are therefore entitled to recover in this suit their damages for loss of boat and cargo respectively.

3. Even if there were fault shown on the part of the Kate Green, its fault cannot be imputed to the cargo, and the colibellant is entitled to recover for its loss against the Nevada.

The Liverpool & Great Western Steam Company (Limited), the appellant herein, by Nash & Holt, its proctors, hereby proposes the following findings of fact and conclusions of law upon this appeal:

## FINDINGS OF FACT.

1. On September 27, 1871, about three o'clock in the afternoon, the steamship Nevada departed for Europe from Pier 46, North River, in the city of New York. The Nevada was one of a line of steamers plying regularly between New York and Liverpool, and owned by the

Liverpool & Great Western Steam Company (Limited), an English corporation, of which the firm of Williams & Guion were the agents at New York. Immediately prior to the departure of the Nevada the position of the vessels in the slip between piers 46 and 47 was as follows: The Nevada lay on the north side of Pier 46, moored to the dock, with her bow towards the North River. The steamship Queen lay across the slip on the south side of Pier 47, also moored to the dock and with her bow towards the river. Two floating grain-elevators lay alongside, and moored to the Queen, one named the Scotia near her bow, and one named the Metropolitan near her stern. Next the Metropolitan was moored a canal-boat called the Sarah and Madonna, from which the elevator Metropolitan was unloading wheat into the Queen. A second canal-boat, either the Mary D. or the C. H. Hart, lay alongside and moored to the Sarah and Madonna. A short time before the Nevada started the canal-boat Kate Green, of which Sergeant J. Quick, the libellant, was master and owner, was brought into the slip by a tug, and at the time when the Nevada actually began to move from the dock upon her voyage the Kate Green lay either alongside, or very nearly alongside, the outermost of the two canal-boats, which were moored alongside the Metropolitan, and either had not made fast to the outermost boat or was improperly and insecurely fastened or was fastened to the outermost boat, which itself was improperly and insecurely fastened by lines running across the intermediate canal-boat to the Metropolitan and the Queen. There were also several small craft near the bulkhead.

435 2. When the Nevada started the revolution of her propeller and the motion of the vessel caused a disturbance of the water and a suction, which tended to draw the Kate Green away from the place where she was lying towards and under the stern of the Nevada, the force of such disturbance and suction were not sufficient to have caused the Kate Green to break away from her fastenings if she had been securely and properly fastened. The Kate Green, however, did begin to drift towards the Nevada soon after the Nevada started. As the Kate Green approached the Nevada she came in contact with the revolving blades of the Nevada's propeller, and received injuries which caused her to fill with water and sink in the slip in about half an hour.

3. The state of the tide at the time and place of the collision was the first quarter of the flood, it having been low water at 1.30 p. m.

4. Prior to the time at which the Nevada started full public notice was given by the persons in charge of said vessel of her intended departure. She had been advertised to sail at that hour. She carried the mails. Her bells were rung and whistles blown several times within fifteen minutes before she started, and those bells and whistles could be easily heard much further than Pier 47. A signal for a pilot was flying at the masthead. There were eighty-four steerage and twenty-three cabin passengers upon that voyage, and they and a large crowd of their friends were about the ship and the pier for some time before and at the time of the Nevada's sailing. The pier was crowded with carriages and teams and the decks with people, and all the bustle and noise occurred which usually accompanies the sailing of a large ocean steamer.

5. Full specific notice by various persons was duly given to Quick, the libellant, and to the other persons on the Kate Green of the intended departure of the Nevada. Such notice was given immediately after the Kate Green entered the slip, and was continued on several distinct occasions by persons on the Nevada, the Queen, the elevators,

and the canal-boats. There was ample time after these notices and before the Nevada started in which the Kate Green might have been either moved up the slip towards the bulkhead to a place of security or securely fastened, but the libellant, although having such notice, negligently permitted the Kate Green to be cast loose in the slip by the tug which brought her there, and negligently omitted to properly secure said Kate Green where she was, or to remove, or cause to be removed, said Kate Green to a place of safety.

6. The Nevada went out straight into the river on a line substantially parallel with the dock. Her stern did not swing over towards the Kate Green.

7. There is conflicting evidence upon the question whether a hawser passing from the Nevada to Pier 46, and which it is claimed by libellants had not been cast off before the Nevada started, broke as she went out of the slip. But the Nevada was not stopped, nor the collision caused or in any way affected by such event, even if it occurred.

436 7½. The length of Pier 46, from the bulkhead to the end of the pier, was 630 feet, and of Pier 47, was 624 feet. The length of the Nevada was 355 feet, and of the Queen was 381 feet. The bow of the Nevada, as she lay at the dock, was 13 feet from the river end of Pier 46. The end of the bowsprit of the Queen, as she lay at the dock, was about 20 feet back, and her bow proper 52 feet 6 inches back from the river end of Pier 47. The width of the slip between piers 46 and 47, was 205 feet. The width of the Queen was 42 feet 4 inches; of the Metropolitan, 24 feet; of each of the canal-boats, from 16 feet to 17 feet 4 inches, and of the Nevada, 43 feet 4 inches.

8. The period which elapsed between the time at which the Kate Green began to drift towards the Nevada and the collision was so brief that the Nevada could not have been stopped in time to prevent the collision.

9. The stoppage of the Nevada in the slip after she had started to go out would have been a proceeding so dangerous to the Nevada and all the other vessels in the slip that the master of the Nevada would not have been justified in stopping her in order to prevent the collision.

10. The Kate Green was worth not more than $2,000.

11. The Western Insurance Company of Buffalo had insured the cargo, and paid the consignees of the cargo $5,860.51 in payment of such insurance. The company subsequently became bankrupt, and its claim for subrogation was sold to the colibellant, McKnight, for $25.

## CONCLUSIONS OF LAW.

1. The master and crew of the Kate Green were guilty of gross negligence, which contributed to and caused the collision.

2. The master and crew of the Nevada, and all persons connected with her sailing, were not guilty of any fault or negligence in connection with the collision.

3. The libellants are not entitled to recover by reason of the matters alleged in the libel or proved in evidence, and the decree appealed from should be reversed, with costs.

4. In any case, Quick is only entitled to recover $2,000 and interest for his boat, and McKnight is not entitled to recover for the cargo.

5. The Kate Green being undoubtedly at fault, the damages at least should be apportioned.

437 Arguments were thereupon made and briefs filed by the advocates for the respective parties.

Thereafter, due deliberation having been had, the said Chief Justice duly made and filed in the office of the clerk of the said circuit court certain findings of fact and conclusions of law in this action in the form following, to wit:

FACTS FOUND BY THE COURT.

1. About three o'clock in the afternoon of September 27, 1871, the steamship Nevada left her berth in the slip between piers 46 & 47, North River, New York, on a voyage to Liverpool. She was one of a line of ocean steamers plying regularly between New York and
438 Liverpool, owned by an English corporation, of which Williams & Guion were agents in New York, and previous to her departure lay on the north side of Pier 46, with her bow towards the river and her stern towards the bulkhead.

2. The slip was two hundred and five feet wide; Pier 46, six hundred and thirty feet long, and Pier 47, six hundred and twenty-four.

3. On the opposite of the slip, and on the south side of Pier 47, lay the steamship Queen, also with her bow toward the river and her stern towards the bulkhead.

The bow of the Nevada was about thirteen feet back from the end of her pier, and that of the Queen fifty-two feet six inches from the end of hers. Two floating grain-elevators lay alongside of and moored to the Queen; one named Scotia, at one of the forward hatches, and the other named Metropolitan, at one of the after hatches. The canal-boat Sarah & Madonna lay alongside of the Metropolitan, with her stern towards the bulkhead, and was being unloaded into the
439 Queen. At her stern lay the canal-boat C. H. Hart, with her bow towards the bulkhead, and extending some distance beyond the Metropolitan. Her stern was made fast by a line to the Metropolitan, and her bow by another leading to the deck of the Queen. She was waiting her turn to be unloaded. One or more boats lay alongside the Scotia and moored to her, and there were two lighters at the bulkhead astern of the Nevada.

4. The length of the Nevada was three hundred and fifty-five feet, and her beam forty-three feet four inches. The length of the Queen was three hundred and eighty-one feet, and her beam forty-two feet four inches. The Metropolitan was about eighty-seven feet long, and her width twenty-four feet. The C. H. Hart was ninety-six feet long, and her width seventeen four inches.

5. Just as the Nevada was starting the canal-boat Kate Green, owned and commanded by the libellant Quick, came into the slip in tow on the port side of the tug Jacob Sinex, and was placed alongside
440 the C. H. Hart. Her master, Quick, made a line fast from her bow to the bow of the Hart, and her steersman another from her stern to the stern of the Hart. While this was being done the tug let go and commenced backing out of the slip, but she had only time to get under the stern of the Kate Green, or a little beyond, when the Nevada started.

6. Previous to the time the Kate Green came into the slip full public notice had been given by those in charge of the Nevada that she was about to depart, and particular notice was also given to all the boats then alongside the Queen, including the C. H. Hart. When the Hart came in she was sent up the slip in order that she might keep out of

the way. The Nevada had been advertised to sail at that hour. Her bells had been rung and her whistles blown several times. Signals indicating that she was about to depart were flying at her masthead. She took out on that voyage a considerable number of cabin and steerage passengers, and there was about her decks and on her
441 pier all the bustle and noise which usually accompanies the sailing of a large ocean steamer.

7. The Kate Green was not seen from the Nevada when she came in, and no special notice was given to her that the Nevada was about to leave. She had no time after her arrival to give particular attention to what was being done on board of the Nevada or on the pier.

All the bells were rung and whistles blown before she arrived, or while the attention of those on board was given to making her fast and getting away from the tug. Neither was there time for her master to examine particularly the fastenings of the Hart. The Nevada started almost simultaneously with her getting alongside the Hart, and the first actual notice she had that the Nevada was about to leave was when the propeller commenced moving. If she was in fact made fast at the time, it had only just been done. She lay about sixty feet from the Nevada.

442 8. The tide was flood and running up by the ends of the piers pretty strong.

9. When the Nevada started the revolution of her propeller and her own motion caused a displacement of the water in the slip and a suction which drew the Hart and the Green away from where they were lying and broke the bow fastenings of the Hart. As soon as this was done the Green swung rapidly toward the Nevada. Her master, who was on deck, called loudly to the Nevada to stop the propeller, but he was not heard, or if heard not heeded. The Nevada kept on without stopping, and the revolving blades of her screw struck the Green under the water-line and a little aft of the port bow, inflicting such an injury as caused her (the Green) to sink soon after, with her cargo on board, and some articles of furniture, &c., belonging to her owner.

10. No one on board of the Nevada knew of the parting of the Hart's lines, or of the swinging of the Green, or of the accident, until
443 after they arrived in Liverpool. If a man had looked from her deck over her side into the slip he could not have failed to see what was going on all the time, from the first movement of the propeller and before, until she got out.

11. There was an abundance of time after the breaking of the fastenings of the Hart, and after the Green began to swing, and after the hail of her master, to have stopped the propeller before the collision.

12. The report of the commissioner as to the damages is warranted by the evidence, and the libellant McKnight was the owner of the claim for damages when the libel was filed.

## CONCLUSIONS OF LAW.

1. The Nevada was in fault for not keeping a sufficient lookout aft and on the side next the slip, and in not seeing the Kate Green when she came in or as she swung over, and in not stopping the propeller in time to avoid the collision.

2. The Kate Green, under the peculiar circumstances in which she was placed, was not in fault.

444 3. The libellants are entitled to recover the damages reported by the commissioner.

And at the same time the said Chief Justice also filed in said clerk's office the following-written opinion:

There are many palpable errors in the testimony in this case, but the material facts as found are satisfactorily proven, and are sufficient, as I think, to charge the Nevada with fault. A large ocean steamer has no right to leave her moorings, in a narrow slip crowded with other craft, by the use of her own propeller without taking the utmost care to prevent accidents by the disturbance of the water which necessarily follows.

The natural effect of the revolution of her propeller is to draw towards her stern all objects near by, movable in the water, and that added to the displacement of the water by the movement of the vessel herself in such a slip makes it the duty of the officers & men responsible for her navigation to be specially vigilant, and to keep the vessel completely under their control until all danger is passed.

445 Other vessels have the right to come into the slip and moor themselves. She has an equal right to be there, and to start on her voyage when she is ready, but she cannot with impunity cause damage to other vessels lying near by any neglect of her own navigation in going out. She must watch for and, if necessary, give warning of danger.

Some witnesses have testified that the Kate Green was told when she came in that the Nevada was about to leave, and sent up into the slip to get out of the way, but upon the whole evidence it is manifest to my mind they were mistaken, and that they confounded the Green with the Hart, which arrived a short time before, and which undoubtedly was warned. I do not entertain a doubt that the Green got into the slip without being noticed from the Nevada, or by any one charged in any manner with her navigation. The entire attention of those on board the Nevada, officers as well as men, so far as I can dis-

446 cover, was directed towards her, and to getting her away from the pier and into the stream without injury to herself. No notice whatever was taken of the other vessels in the slip, and no one was set to lookout for danger on the other side of the vessel, or at the stern, when it ought to have been known that much damage might be done to the neighboring vessels by the screw, if from any cause they got loose from their moorings. This I cannot but consider, under the circumstances, a gross fault.

With the large number of competent officers and men which the prudent and successful navigation of such a vessel required on board there was no difficulty in providing men for the performance of that duty, and if they had been at their posts the Green would have been seen as she approached the slip and stopped outside, or sent up into the slip with her tug away from danger, to wait until the Nevada had gone. The fastenings of the Hart might have been strength-

447 ened to meet the additional strain caused by the presence of the Green alongside, or when the boats broke away and the Green swung over the propeller might have stopped until she could have been got away. I know that since the appeal testimony has been taken to show that it would have been unsafe to stop the propeller after the steamer had started, because of the effect of the tide upon her bow when it got outside the end of the pier.

If this was really so, of which I am by no means certain, it was a fault in the steamer to start without making provision to counteract the effect of the tide in case it became necessary to stop. The rule

hardly admits of an exception which requires a steamer moving by her own power in a crowded and narrow slip to maintain complete control of herself. She is not likely to be put in a situation during her entire voyage where other vessels will be exposed to so much danger from her movements as there, and if she cannot get out by the
448 use of her own propeller without doing damage to other vessels that are lawfully moored near her she must employ a tug.

An attempt has been made to prove that the steamer broke a hawser leading from her to her pier as she went out, and that her stern swung away from the pier and out into the slip. The testimony on both these points is very conflicting, and it is not easy to say what the actual facts were, but in the view I take of the case they are unimportant. The real fault of the steamer was in not keeping a lookout astern and over her side into the slip. The office of a lookout is to watch for the approach of danger, and he should be stationed where he can best do what is required of him. At sea danger is most to be looked for ahead, and the lookout takes his place at the bow, but in a crowded slip there is as much and oftentimes more use for him at the stern, or over the side, than at the bow. Under such circumstances it is as impor-
449 tant to keep men stationed there as at sea it would be forward.

Thus much for the Nevada.

At first I was inclined to think the Kate Green was also at fault, but on further reflection have reached a different conclusion.

In the City of Paris, 14 Blatch., a case like this in many of its features, I held a canal-boat responsible equally with the steamer and divided the damages, because the canal-boat was insufficiently moored, but there the steamer was known to be about to sail long before she started, and the captain of the canal-boat ought to have known that the boat alongside of which he was moored was not securely fastened. Besides this, he lay within twenty-five feet of the steamer, and a very little change of position would bring the vessels together. Here, however, the Kate Green had no actual notice that the steamer was about to leave, and I am by no means satisfied that she was securely made
450 fast to the Hart before the propeller was set in motion. If there had been time enough she might have seen by the indications on the steamer or the pier that the steamer was about to start, but in passing into and along the slip she was cut off from any view of what was going on. If she had had time also she might have seen that the Hart was not sufficiently fastened to hold the two boats, and it is possible that but for this the rule acted upon in the City of Paris might with propriety be applied here.

But upon the case as it stands I think the whole fault must be charged on the steamer. Had she kept up her proper lookout, & given the necessary warning, all defects in the mooring of the canal-boat could have been avoided.

The delay in filing the libel is sufficiently explained, and no change has taken place in the ownership of the Nevada since the loss. The suit, therefore, is not barred by lapse of time. While there may have been some difficulty in obtaining testimony caused by the length
451 of time which elapsed between the occurrence and the trial, the facts on which the case turns, if not admitted, are not seriously contested.

There is no complaint as to the amount of damages allowed by the commissioner, except in relation to the value of the canal-boat, and in that, I think, the preponderence of evidence is in favor of the report.

A decree may be prepared in favor of the libellant Quick for three

thousand one hundred dollars, and interest at 6 per cent. from September 27, 1871, and in favor of the libellant McKnight for five thousand eight hundred and sixty $\frac{61}{100}$ dollars, with like interest from the same date, and for costs.

And thereafter the proctors for the claimants duly made and filed in said clerk's office, and served on the proctor for said libellants, certain exceptions to said findings of fact and conclusions of law found as aforesaid by said Chief Justice, and also certain exceptions to the refusal of the said Chief Justice to make certain findings of fact and
452 conclusions of law proposed and requested as aforesaid by the proctors for claimant, which said exceptions are in the form following, to wit:

Exceptions on behalf of the claimant and appellant to the findings of fact and conclusions of law made and filed by the Chief Justice of the Supreme Court of the United States, sitting as circuit justice in the above-entitled action, and to his refusal to make findings proposed by the appellant.

1. The appellant excepts to that portion of the fifth finding of fact which finds that the canal-boat Kate Green came into the slip "just as the Nevada was starting," and also to that portion which finds that two lines were made fast from the Green to the Hart, whereas the court should have found that the Kate Green came into the slip a number of minutes before the Nevada started, and that the time which elapsed after her entry and before the Nevada started was ample for those on the Kate Green to learn that the Nevada was about to sail,
453 and to have moored or placed the Kate Green in a place of safety, but that during said period those on the Kate Green negligently omitted to make the Kate Green fast or secure.

2. The appellant excepts to the whole of the seventh finding of fact, that "the Kate Green was not seen from the Nevada when she came in, and no special notice was given to her that the Nevada was about to leave. She had no time after her arrival to give particular attention to what was being done on board of the Nevada or on the pier. All the bells were rung and whistles blown before she arrived, or while the attention of those on board was given to making her fast and getting away from the tug. Neither was there time for her master to examine particularly the fastenings of the Hart. The Nevada started almost simultaneously with her getting alongside the Hart, and the first actual notice that she had that the Nevada was about to leave was
454 when the propeller commenced moving. If she was in fact made fast at the time it had only just be' done. She lay about sixty feet from the Nevada."

3. The appellant excepts to that portion of the ninth finding of fact which finds that the bow fastenings of the Hart were broken when the Nevada left the slip; whereas the court should have found that the Kate Green being unfastened alone swung across the slip.

4. The appellant excepts to the eleventh finding of fact, that—

"There was an abundance of time after the breaking of the fastenings of the Hart, and after the Green began to swing, and after the hail of her master, to have stopped the propeller before the collision."

5. The appellant excepts to that portion of the twelfth finding of fact which finds that the report of the commissioner as to the damages is warranted by the evidence.

6. The appellant excepts to the first conclusion of law, that—

"The Nevada was at fault in not keeping a sufficient lookout
455 aft, and on the side next the slip, and in not seeing the Kate Green when she came in, or as she swung over, and in not stopping the propeller in time to avoid the collision."

7. The appellant excepts to the second conclusion of law, that—

"The Kate Green, under the peculiar circumstances in which she was placed, was not in fault."

8. The appellant excepts to the third conclusion of law, that—

"The libellants are entitled to recover the damages reported by the commissioner."

The appellant also excepts to the refusal of said Justice to make certain findings of fact and conclusions of law which he was duly requested to make by the appellant, as follows:

9. The appellant excepts to the refusal to find the following finding of fact:

"Full specific notice by various persons was duly given to Quick, the libellant, and to the other persons on the Kate Green, of the
456 intended departure of the Nevada. Such notice was given immediately after the Kate Green entered the slip, and was continued on several distinct occasions by persons on the Nevada, the Queen, the elevators, and the canal-boats. There was ample time after these notices and before the Nevada started in which the Kate Green might have been either moved up the slip towards the bulkhead to a place of security or securely fastened; but the libellant, although having such notice, negligently permitted the Kate Green to be cast loose in the slip by the tug which brought her there, and negligently omitted to properly secure the said Kate Green where she was, or to remove, or cause to be removed, said Kate Green to a place of safety."

10. The appellant excepts to the refusal to find the following finding of fact:

"The period which elapsed between the time at which the Kate Green began to drift towards the Nevada and the collision was so brief that the Nevada could not have been stopped in time to prevent the collision."

457 11. The appellant excepts to the refusal to find the following finding of fact:

"The stoppage of the Nevada in the slip after she had started to go out would have been a proceeding so dangerous to the Nevada and all the other vessels in the slip that the master of the Nevada would not have been justified in stopping her in order to prevent the collision."

12. The appellant excepts to the refusal to find the following finding of fact:

"The Kate Green was worth not more than $2,000."

13. The appellant excepts to the refusal to find the following conclusion of law:

"The master and crew of the Kate Green were guilty of gross negligence, which contributed to and caused the collision."

14. The appellant excepts to the refusal to find the following conclusion of law:

"The master and crew of the Nevada, and all persons connected with her sailing, were not guilty of any fault or negligence in connec-
458 tion with the collision."

15. The appellant excepts to the refusal to find the following conclusion of law:

"The libellants are not entitled to recover by reason of the matters alleged in the libel or proved in evidence, and the decree appealed from should be reversed, with costs."

16. The appellant excepts to the refusal to find the following conclusion of law:

"In any case, Quick is only entitled to recover $2,000 and interest for his boat, and McKnight is not entitled to recover for the cargo."

17. The appellant excepts to the refusal to find the following conclusion of law:

"The Kate Green being undoubtedly at fault, the damages at least should be apportioned."

And then a final decree of the said circuit court was, by order of the said Chief Justice, entered in the office of the clerk of the said circuit court affirming the decree of the said district court, and adjudg-
459 ing that Sergeant J. Quick, the libellant, recover $5,219.12 in this action, and Frederick A. McKnight, the colibellant, also recover $8,718.98 in this action; and that the said libellant and colibellant should have judgments for said amounts, respectively, against the said appellant, The Liverpool and Great Western Steam Company (Limited.)

And inasmuch as the said several matters produced and given in evidence on the trial in said circuit court, and by the proctors for the said claimant objected and insisted upon, and the said exceptions do not appear by the record of the decree of said circuit court, the proctors for the said claimant have prepared and caused this bill of exceptions to be settled as a record thereof, upon due notice to the proctor for the libellants, according to the statute in such case provided and the practice of the court, and to be duly signed and filed.

M. R. WAITE.

460 (Endorsed:) U. S. circuit court, southern district of New York, second circuit. Sergeant J. Quick, libellant, and Frederick A. McKnight, colibellant, vs. The Steamship Nevada, &c., The Liverpool and Great Western Steam Co. (Limited), claimant & appellant. Bill of exceptions. Nash & Holt, pro's for cl'm't & app'lt, 50 Wall st., N. Y.

We consent that the bill of exceptions be settled as proposed within
[L. L.] EUGENE H. LEWIS,
P'r

*For Libell'ts.*

461 U. S. circuit court. Filed Oct. 3d, 1879. John I. Davenport, clerk.

462 At a stated term of the circuit court of the United States for the southern district of New York, in the second circuit, held at the court-rooms in the city of New York, on the 10th day of September, 1879;

Present, honorable Morrison R. Waite, Chief Justice.

SERGEANT J. QUICK, LIBELLANT, AND FREDERICK A. McKNIGHT, colibellant, appellees,
*vs.*
THE STEAMSHIP NEVADA, HER TACKLE, &C., The Liverpool and Great Western Steam Co. (Limited), claimant and appellant.

This cause having been heard on the appeal, on the pleadings and proofs, and having been argued by the advocates for the respective parties, and submitted on briefs and points, and due deliberation having been had in the premises, it is now, on motion of Eugene H.
463 Lewis, proctor,

Ordered, adjudged, and decreed that the decree of the district court in this cause be and the same is hereby in all things affirmed, with costs of this court to be taxed, and with the costs of the district court as taxed.

It is further ordered, adjudged, and decreed that the libellant Sergeant J. Quick recover in this action against The
$3,100. Steamship Nevada, her tackle, &c., &c., the sum of three thousand and one hundred dollars, with interest thereon at the rate of six per centum per annum from the 27th day of September, 1871, to the 10th day of September, 1879, the date of the entry of this decree, amounting to the sum of
$1,477.65. one thousand four hundred and seventy-seven and $\frac{65}{100}$ dollars, and his costs in the district court, which were taxed
$488.77. at the sum of four hundred and eighty-eight and $\frac{77}{100}$ dollars, and his costs in this court, which have been taxed at
$152.70. the sum of one hundred and fifty-two and $\frac{70}{100}$ dollars, in all
$5,219.12. amounting to the sum of five thousand two hundred
464 and nineteen and $\frac{12}{100}$ dollars, and that he have judgment therefor against the claimant herein, The Liverpool and Great Western Steam Company (Limited).

And it is further adjudged, ordered, and decreed that the colibellant Frederick A. McKnight recover in this action against the steamship Nevada, her tackle, &c., &c.,
$5,860.51. the sum of five thousand eight hundred and sixty and $\frac{51}{100}$ dollars, with interest thereon at the rate of six per centum per annum from the 27th day of September, 1871, to the 10th day of September, 1879, the date of entry of this de-
$2,793.47. cree, amounting to the sum of two thousand seven hundred and ninety-three and $\frac{47}{100}$ dollars, and his costs in the dis-
$40.00. trict court, which were taxed at the sum of forty dollars, and his costs in this court, which have been taxed at the
$25.00. sum of twenty-five dollars, in all amounting to the sum of
$8,718.98. eight thousand seven hundred and eighteen and $\frac{98}{100}$ dollars, and that he have judgment therefor against the claimant herein, The Liverpool and Great Western Steam Company (Limited).

And it is further ordered, adjudged, and decreed that unless
465 an appeal be taken from this decree within ten days after its entry and service of a copy thereof, and security given on such appeal to stay execution, or this decree be fulfilled and satisfied before the expiration of the said ten days, the stipulators and sureties for value, and on the appeal to this court for the libellants' damages and costs, cause the engagements of their stipulations and obligations to be performed, or show cause within four days after the expiration of the said ten days, or on the first day of jurisdiction thereafter, why execution should not issue against them, their goods, chattels, and lands.

M. R. WAITE.

(Endorsed:) U. S. circuit court. Sergeant J. Quick et al. vs. The Steamship Nevada, her tackle, &c. Eugene H. Lewis, proctor for libellant, 346 B'way.

466 We have no objection to the form of this decree.
Sept. 10th, 1879.

NASH & HOLT,
*Proctors for Appellant.*

Figures correct.

N. & H.

467 Circuit court of the United States for the southern district of New York, in the second circuit.

SERGEANT J. QUICK, LIBELLANT, AND FREDERICK A. McKNIGHT, colibellant, appellees,
*vs.*
THE STEAMSHIP NEVADA, HER TACKLE, &C., The Liverpool and Great Western Steam Co., claimant and appellant.

To the honorable the Supreme Court of the United States:

The appeal of The Liverpool and Great Western Steam Company (Limited), claimant and appellant herein, by Nash & Holt, its proctors, respectfully shows:

That on the 22d day of November, 1875, Sergeant J. Quick, the above-named libellant, exhibited his libel in the district court of the United States for the southern district of New York, against the
468 said steamship Nevada, her tackle, apparel, furniture, steam-engines, and boilers, praying, among other things, for the reasons set forth in said libel, that the said court would pronounce for the claims in the said libel set forth, and would condemn the said steamship therefor.

That thereupon, and on the 22d day of November, 1875, The Liverpool and Great Western Steam Company (Limited) appeared in said suit and entered and filed their claim to the said steamship, and a stipulation for the costs of said suit, pursuant to the course and practice of said district court, and a bond in the sum of twelve thousand dollars, in accordance with the acts of Congress in that behalf and the practice of said district court.

That on the 17th day of December, 1875, the said claimant of said steamship filed its answer to said libel in said district court, praying that the said court would pronounce against the said libel and condemn the libellants in costs.

That by an order of said district court, dated 5th day of March,
469 1877, it was ordered that Frederick A. McKnight be allowed to intervene in this suit as colibellant.

That said cause came on to be heard before the honorable Samuel Blatchford, judge of the said district court, on the 19th day of June, 1877, and the trial thereof was continued upon the 20th and 21st days of June, and the 17th, 18th, and 19th days of October, 1877. And the said judge having duly considered the testimony adduced by the respective parties, afterwards, on the 30th day of November, 1877, made a decree in said cause, whereby it was decreed that the libellant and colibellant should recover in this action against said steamship, her tackle, &c., the damages by them sustained by reason of the collision in the libel set forth, with their respective costs; and whereby it was referred to a commissioner of said district court to ascertain the amount of said damages respectively, and to report thereon to said district court.

That under said decree a reference was had to George F. Betts,
470 esq., a commissioner of said court, to ascertain the amount of such damages.

That by the report of such commissioner, dated the 19th day of February, 1878, it was reported to said court that the aggregate amount of damage sustained by Sergeant J. Quick, the libellant, by the collision aforesaid, including interest, amounted to four thousand two hundred

and eighty-nine dollars and seventy-two cents ($4,289.72), and by Frederick A. McKnight, the colibellant, amounted to eight thousand one hundred and nine dollars and sixty-four cents ($8,109.64).

That by exceptions dated and filed February 19th, 1878, the claimant duly excepted to said commissioner's report, upon grounds stated therein at length; and by exceptions dated February 28, 1878, the libellant Sergeant J. Quick excepted to said report upon certain other grounds therein stated.

That the hearing upon said exceptions came on before Hon. Samuel Blatchford, judge of said court, on March 2d, 1878; and on the
471 25th day of March, 1878, the said exceptions by libellant and also by claimant were overruled, and the said report confirmed by said district court by the final decree thereof; by which final decree it was adjudged that said libellants recover in this action against the said steamship Nevada, her tackle, &c., the sum of $4,289.72, with interest and costs, amounting altogether to the sum of $4,802.80, and that the said steamship be condemned therefor, and also that said colibellant recover in this action against said steamship the sum of $8,109.64, with interest and costs, amounting altogether to $8,195.59, and that said steamship be also condemned therefor.

That thereupon, and after said final decree of said district court, your petitioner, the appellant, duly appealed therefrom to the circuit court of the United States for the southern district of New York, in the second circuit, and the said cause was thereupon removed to the said circuit court, and was there brought to a hearing on the proofs taken in said district court, and on new proofs taken in said circuit court
472 and tried anew on June 17, 1879; that thereafter the said circuit court made a final decree in said cause, dated September 10, 1879, and duly entered and filed on September 13, 1879, whereby it was adjudged and decreed that the said decree of the district court in this cause be in all things affirmed, with costs, and that said libellant Sergeant J. Quick recover in this action against the said steamship Nevada, her tackle, &c., the sums of $3,100.00 principal, $1,477.65 interest thereon, $488.77 costs in said district court, and $152.70 costs in said circuit court, amounting in all to five thousand two hundred and nineteen dollars and twelve cents ($5,219.12), and that he have judgment against the appellant, The Liverpool and Great Western Steam Company (Limited) therefor, and also that said colibellant Frederick A. McKnight recover in this action against said steamship Nevada, her tackle, &c., the sums of $5,860.51 principal, $2,793.47 interest thereon, $40.00 costs in said district court, and $25.00 costs in said cir-
473 cuit court, amounting all to eight thousand seven hundred and eighteen dollars and ninety-eight cents ($8,718.98), and that he have judgment against the appellant, The Liverpool and Great Western Steam Company (Limited) therefor.

And this appellant is advised and insists that the said decree is erroneous, inasmuch as said libellant and colibellant were not, nor was either of them, entitled to said damages, or to any damages, but said appellant was entitled to have said libel dismissed on the merits, with costs.

And this appellant, for these and other reasons, feeling aggrieved by said decree, hereby appeals from the whole of said decree of said circuit court to the Supreme Court of the United States, and respectfully prays that the decree of the said circuit court, and the libel, answer, petition, and order to intervene, pleadings, depositions, testimony, evidence, exhibits, findings, and exceptions thereto, and the proceedings in said

cause may be sent to the Supreme Court of the United States
474 without delay, and that the said Supreme Court will proceed to hear the said cause, and that the said decree of the said circuit court and every part thereof may be reversed, and that a mandate may be issued to the said circuit court, directing that the said decree be reversed, and that a decree be entered in favor of the claimant and appellant, dismissing the said libel on the merits, with costs, or that such other decree be made as to the said Supreme Court shall seem fit.

New York, September 15, 1879.

NASH & HOLT,
*Proctors for Claimant & Appellant, 50 Wall st., New York City.*

(Endorsed:) U. S. circuit court, s. d. of New York, second circuit. Sergeant J. Quick, libellant, & Frederick A. McKnight, co-
475 libellant, appellees, vs. The S. S. Nevada, &c., The Liverpool & Great Western Steam Co. (Limited,) claimant & appellant. Appeal. Nash & Holt, pro's for cl'm't & app'l't, 50 Wall st., N. Y. U. S. circuit court. Filed Sep. 15, 1879. John I. Davenport, clerk.

476 Circuit court of the United States for the southern district of New York.

SERGEANT J. QUICK, LIBELLANT, AND FREDERICK A. McKNIGHT, colibellant, appellees,
*against*
THE STEAMSHIP NEVADA, HER TACKLE, &C., The Liverpool and Great Western Steam Company (Limited), claimant and libellant.

Know all men by these presents that we, The Liverpool and Great Western Steam Company (Limited), as principal, and William K. Hinman and John J. Crane, as sureties, are held and firmly bound unto the above-named appellees, Sergeant J. Quick and Frederick A. McKnight, in the sum of thirty thousand dollars, to be paid to the said appellees, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with
477 our seals and dated this 19th day of September, 1879.

Whereas a final decree has been rendered by the circuit court of the United Sates for the southern district of New York in the above-entitled action, whereby it is adjudged and decreed that the libellant Sergeant J. Quick recover $5,219.12, and the colibellant Frederick A. McKnight $8,718.98, and that each of them have judgment for said sums respectively against the claimant, The Liverpool and Great West-ern Steam Company (Limited.)

And whereas said decree was filed in the office of the clerk of said circuit court, at the city of New York, on the thirteenth day of September, 1879;

And whereas the claimant above named, The Liverpool and Great Western Steam Company (Limited) feeling aggrieved thereby, has appealed from said final decree of said circuit court to the Supreme Court of the United States:

Now, therefore, the condition of this obligation is such that if
478 the above-named claimant and appellant shall prosecute its said appeal to effect, and answer all damages and costs if they fail to

make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

In witness whereof the undersigned have hereunto set their hands and seals the day and year above written.

LIVERPOOL & GREAT WESTERN STEAM CO. (LIMITED.)
By WM. H. GUION. [L. S.]
WM. K. HINMAN. [L. S.]
JOHN J. CRANE. [L. S.]

Signed, sealed, delivered, taken, and acknowledged in my presence, this 19th day of September, 1879.

JOHN A. SHIELDS,
*U. S. Comm'r, S. D. of New York.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

William K. Hinman, being duly sworn, does depose and say that he resides at 4 West 27th street, in the city of New York; that he is a freeholder within the State of New York, and is worth thirty thousand dollars over and above all his just debts and liabilities.

WM. K. HINMAN.

479 Sworn to before me this 19th day of September, 1879.

JOHN A. SHIELDS,
*U. S. Commissioner, S. D. of N. Y.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

John J. Crane, being duly sworn, deposes and says that he resides at 138th st. near St. Ann's av., in the city of New York; that he is a freeholder within the State of New York, and is worth thirty thousand dollars over and above all his just debts and liabilities.

JOHN J. CRANE.

Sworn to before me this 19th day of September, 1879.

JOHN A. SHIELDS,
*U. S. Commissioner, S. D. of N. Y.*

The foregoing bond is hereby approved.
September 22, 1879.

SAM'L BLATCHFORD,
*Circuit Judge.*

480 (Endorsed:) U. S. circuit court, S. D. of New York. Sergeant J. Quick et al., appellees, against Steamship Nevada et al., claimants and appellants. Bond on appeal. Nash & Holt, pro's for cl'ts & app'l'ts, 50 Wall st., New York City. U. S circuit court. Filed Sept. 23, 1879. John I. Davenport, clerk.

481 By the honorable Samuel Blatchford, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit.

To Sergeant J. Quick, libellant, and Frederick A. McKnight, colibellant:

Whereas The Liverpool and Great Western Steam Company (Limited) has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of New York, in the second circuit, in favor of you, said Sergeant J. Quick, libellant, and Frederick A. McKnight, colibel-

lant, and against The Liverpool and Great Western Steam Company (Limited), stating that said decree is erroneous, and praying that the same be reversed, and has filed the security required by law: Now, therefore,

You are hereby cited to appear before the said Supreme Court of the United States at the city of Washington, in the District of
482 Columbia, on the second Monday of October next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand and the seal of the court, at the city of New York, in the second circuit, the 22d day of September, in the year one thousand eight hundred and seventy-nine, and of the Independence of the United States the one hundredth and fourth.

SAM'L BLATCHFORD,
*Circuit Judge.*

(Endorsed:) U. S. circuit court, southern district of New York. Sergeant J. Quick, libellant, and Frederick A. McKnight, colibellant, vs. The Steamship Nevada, &c., The Liverpool & Great Western Steam Company (Limited), claimant & appellant. Citation. Nash & Holt, pro's for appellant, 50 Wall st., N. Y.

483 Due service of a copy thereof is hereby admitted.

E. H. LEWIS,
*Proctor for Libellant and Colibellant.*

SEP. 23, '79.

U. S. circuit court. Filed Sep. 23, 1879. John I. Davenport, clerk.

484 UNITED STATES OF AMERICA,
*Southern District of New York, ss:*

I, John I. Davenport, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to 483, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Sergeant J. Quick, libellant, and Frederick A. McKnight, colibellant, appellees, against The Steamship Nevada, her tackle, &c., The Liverpool and Great Western Steam Co., claimant and appellant, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the city of New York, in the southern district of New York, in the second circuit, this seventh day of October, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the said United States the one hundred and fourth.

[SEAL.] JOHN I. DAVENPORT, *Clerk.*

(Indorsement on cover:) No. 324. The Steamship Nevada, her tackle, &c., The Liverpool and Great Western Steam Company, claimant, appellant, vs. Sergeant J. Quick, libellant, & Frederick A. McKnight, colibellant. S. New York C. C. U. S. Filed 13th October, 1879.

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# U. S. Supreme Court,

## IN ADMIRALTY.

SERJEANT J. QUICK AND FREDERICK A. MCKNIGHT,
*Appellees,*

*vs.*

THE STEAMSHIP "NEVADA," THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY (LIMITED), CLAIMANT,
*Appellants.*

*Points of Appellants.*

This is an appeal by the claimant from a decree in admiralty, made in the Southern District of New York, and affirmed in the Circuit, which condemned the steamship *Nevada* as in fault in a collision, by which the canal boat *Kate Green*, owned by the libellant Quick, was sunk, with a cargo of corn, for which the libellant McKnight had intervened.

The collision took place within the slip between Piers 46 and 47, North river, in the City of New York, on the 27th day of September, 1871, just after the steamship *Nevada* had, at three o'clock P. M., cast loose from her dock and started on her voyage.

The libel was not filed till four years afterwards, November 24, 1875, and was then filed by Quick, as owner of the canal boat, in his own behalf, and for McKnight, as then owner of the claim for damage to the cargo.

It was not till a year later (16th October, 1876,) that McKnight, by petition in his own behalf, claiming as assignee by mesne assignments of the claim of the original owner to indemnity for the loss (*p.* 10, *fol.* 19), was allowed to intervene as co-libellant.

The case was heard in June, 1877, and decided against the *Nevada* in November, 1877 (*p.* 173, *fol.* 304), and upon the report of the commissioner a final decree was made in favor of the libellant Quick, as owner of the canal boat, for $4,802.80, and in favor of the co-libellant McKnight, as owner of the cargo, for $8,195.59 (*p.* 220, *fol.* 390).

On appeal to the Circuit Court, some additional testimony on the part of the appellants was taken, which was not contradicted (*pp.* 227-238). The case was heard there in June, 1879, and the decree of the District Court was affirmed on the 10th September, 1879 (*pp.* 251-2).

Each party submitted proposed findings of fact with conclusions of law to be passed upon by the court, those on part of libellants are at *pp.* 240-242; those on part of the claimant are at *pp.* 242-244. In conformity with the statute (18 St., 315), the Circuit Court found "the facts and conclusions of law," as stated at *pp* 245-6, and signed a bill of exceptions (*pp.* 239-241).

From the decree of the Circuit Court the claimant has appealed, and alleges the said decree to be erroneous, upon the following grounds:

(1.) That the findings of the court do not sustain the allegations of the libel.

(2.) That the facts found do not sustain the conclusion of law that the *Nevada* was in fault.

(3.) That the facts found do not sustain the conclusion of law that the *Kate Green* was not in fault.

(4.) That the facts found do not justify the conclusions of law.

(5.) That negligence on the part of the *Nevada* not being found as matter of fact, the finding of negligence as matter of law is not warranted.

(6.) That want of fault on the part of the *Kate Green* not being found as a matter of fact, the finding her to have been, as matter of law, free from fault is not warranted.

(7.) That the refusal to find appellants' ninth request, which was based on uncontradicted evidence, was error.

(8.) That the refusal to find appellants' eleventh request, which was based on uncontradicted facts, was error.

(9.) That the court erred in admitting McKnight, a speculative assignee, to intervene.

The findings of fact and conclusions of law, as settled by the court, are here set out *verbatim*, to avoid the risk of the findings requested by each party being confused with those made by the court.

"FACTS FOUND BY THE COURT.

1. About three o'clock in the afternoon of September 27, 1871, the steamship *Nevada* left her berth in the slip, between Piers 46 and 47, North river, New York, on a voyage to Liverpool. She was one of a line of ocean steamers plying regularly between New York and Liverpool, owned by an English corporation, of which Williams & Guion were agents in New York, and previous to her departure lay on the north side of Pier 46, with her bow toward the river, and her stern toward the bulkhead.

2. The slip was two hundred and five feet wide, Pier 46 six hundred and thirty feet long, and Pier 47 six hundred and twenty-four.

3. On the opposite of the slip, and on the south side of Pier 47, lay the steamship *Queen*, also with her bow toward the

river and her stern towards the bulkhead. The bow of the *Nevada* was about thirteen feet back from the end of her pier, and that of the *Queen* fifty-two feet six inches from the end of hers. Two floating grain elevators lay alongside of, and moored to, the *Queen*, one named *Scotia*, at one of the forward hatches, and the other named *Metropolitan*, at one of the after hatches. The canal boat *Sarah and Madonna* lay alongside of the *Metropolitan*, with her stern towards the bulkhead, and was being unloaded into the *Queen*. At her stern lay the canal boat *C. H. Hart*, with her bow towards the bulkhead, and extending some distance beyond the *Metropolitan*. Her stern was made fast by a line to the *Metropolitan*, and her bow by another leading to the deck of the *Queen*. She was waiting her turn to be unloaded. One or more boats lay alongside the *Scotia*, and moored to her, and there were two lighters at the bulkhead astern of the *Nevada*.

4. The length of the *Nevada* was three hundred and fifty-five feet, and her beam forty-three feet four inches. The length of the *Queen* was three hundred and eighty-one feet, and her beam forty-two feet four inches. The *Metropolitan* was about eighty-seven feet long, and her width twenty-four feet. The *C. H. Hart* was ninety-six feet long, and her width seventeen four inches.

5. Just as the *Nevada* was starting the canal boat *Kate Green*, owned and commanded by the libellant Quick, came into the slip in tow on the port side of the tug *Jacob Sinex* and was placed alongside the *C. H. Hart*. Her master, Quick, made a line fast from her bow to the bow of the *Hart*, and her steersman, another from her stern to the stern of the *Hart*. While this was being done, the tug let go and commenced backing out of the slip, but she had only time to get under the stern of the *Kate Green* or a little beyond, when the *Nevada* started.

6. Previous to the time the *Kate Green* came into the slip, full public notice had been given by those in charge of the *Nevada* that she was about to depart, and particular notice was also given to all the boats then alongside the *Queen*, including the *C. H. Hart*. When the *Hart* came in she was

sent up the slip in order that she might keep out of the way. The *Nevada* had been advertised to sail at that hour. Her bells had been rung, and her whistles blown several times. Signals indicating that she was about to depart were flying at her mast head. She took out on that voyage a considerable number of cabin and steerage passengers, and there was about her decks and on her pier all the bustle and noise which usually accompanies the sailing of a large ocean steamer.

7. The *Kate Green* was not seen from the *Nevada* when she came in, and no special notice was given to her that the *Nevada* was about to leave. She had no time after her arrival to give particular attention to what was being done on board of the *Nevada*, or on the pier. All the bells were rung and whistles blown before she arrived, or while the attention of those on board was given to making her fast and getting away from the tug. Neither was there time for her master to examine particularly the fastenings of the *Hart*. The *Nevada* started almost simultaneously, and with her getting alongside the *Hart* and the first actual notice she had that the *Nevada* was about to leave, was when the propellor commenced moving. If she was in fact made fast at the time, it had only just been done. She lay about sixty feet from the *Nevada*.

8. The tide was flood and running up by the ends of the piers pretty strong.

9. When the *Nevada* started, the revolution of her propeller and her own motion caused displacement of the water in the slip, and a suction which drew the *Hart* and the *Green* away from where they were lying, and broke the bow fastenings of the *Hart*. As soon as this was done, the *Green* swung rapidly toward the *Nevada*. Her master, who was on deck, called loudly to the *Nevada* to stop the propeller, but he was not heard, or if heard not heeded. The *Nevada* kept on without stopping, and the revolving blades of her screw struck the *Green* under the water line, and a little aft of the port bow, inflicting such an injury as caused her, the *Green*, to sink soon after with her cargo on board, and some articles of furniture, &c., belonging to her owner.

10. No one on board of the *Nevada* knew of the parting of the *Hart's* lines, or of the swinging of the *Green*, or of the accident until after they arrived in Liverpool. If a man had looked from her deck, over her side into the slip, he could not have failed to see what was going on all the time from the first movement of the propeller, and before, until she got out.

11. There was an abundance of time after the breaking of the fastenings of the *Hart* and after the *Green* began to swing, and after the hail of her master to have stopped the propeller before the collision.

12. The report of the commissioner as to the damages is warranted by the evidence, and the libellant McKnight was the owner of the claim for damages when the libel was filed.

## Conclusion of Law.

1. The *Nevada* was in fault for not keeping a sufficient look-out aft, and on the side next the slip, and in not seeing the *Kate Green* when she came in or as she swung over, and in not stopping the propeller in time to avoid the collision.

2. The *Kate Green*, under the peculiar circumstances in which she was placed, was not in fault.

3. The libellants are entitled to recover the damages reported by the commissioner.

I.—The allegation in the libel, that, while the "canal boat *Kate Green* was lying duly and *securely fastened* in the slip, the steamship *Nevada*, which had previously been moored to the north side of Pier 4 $\frac{1}{2}$, North river, proceeded on her way to sea, and, having ample and sufficient sea room therefor, carelessly and negligently *ran into and struck* the said canal boat" (*p.* 1, *fol.* 2), is not sustained by the findings of the court.

On the contrary, the finding is that the revolution of the propeller of the *Nevada* when she started, and her own motion caused a displacement of the water in the slip and a suction which drew the other boats over, their fastenings giving way, and that "as soon as this was done, the *Green* swung rapidly towards the *Nevada*," so that, as she kept on, "the blades of her screw struck the *Green*" (*p.* 246, *fol.* 442).

The charge is that the steamer *ran into* the canal boat; the finding is substantially that the canal boat ran into the steamer; that this was caused by the natural displacement of the water, raises a question as to the liability of the vessel causing this displacement, but the allegation that the steamer was the colliding vessel is not sustained.

The rule is well settled that the case made by the libel should be proved, and not some other case, in order to warrant a decree for the libellant (*McKinlay* v. *Morrish*, 21 *How.*, 343, 347. *The Syracuse*, 12 Wall., 167).

If it be urged that this is a technical rule, it is all the more important that the rule should be adhered to, now that the appellate court is confined in its review to the facts specially found by the court below. That it should be so confined, is a rule as technical as the other. Both are established to aid in the just determination of the case.

The importance of adhering to the rule is the greater, when there has been, as here, great delay (four years) in commencing the action. In his opinion the chief justice declared that there were "many palpable errors in the testimony" (*p.* 247, *fol.* 444) and answered the point as to the delay in filing the libel, by the statement that "the facts on which the case turns * * * are not seriously contested" (*p.* 248, *fol.* 451).

This is true, in respect to some of the facts, but it is equally true that the grounds upon which the case was made to turn are inconsistent with the allegations of the libel.

Thus, the liability of the *Nevada* is made to turn on the want of a sufficient look-out "aft and on the side next the slip, and in not seeing the *Kate Green when she came in*, or as she swung over, and in not stopping the propeller in time to avoid the collision" (*p.* 246, *fol.* 443).

But clearly, if, as alleged in the libel, the canal boat had come in before the steamer started and had got "securely fastened," and the steamer had swung across the slip and struck her, the

fact of look-out or no look-out would have been utterly immaterial. And so, if the canal boat had been, as alleged, securely fastened, the steamer would have clearly been right in starting, and must have been well under way in order to break the canal boat away by the suction of the water. Whether the steamer could then have stopped with prudence would have presented a different question, from the question whether seeing a boat loose near her, she ought to have started at all. If the boats in the slip were "well and securely fastened," the *Nevada* could safely start. But she was held liable in the Circuit Court on the assumption that the *Kate Green* was loose, and that the steamer ought to have known it, and would have done so if she had had a look-out aft.

The contradictory grounds upon which the steamer was held liable in the District and in the Circuit Courts are apparent from the opinion of the District Judge. After discussing the answer, he says, the fair reading of it is that the canal boat was *not* securely fastened, and that the *Nevada* knew it, and that, nevertheless seeing "that she continued to be insufficiently moored" (*p.* 225, *fol.* 400), "she put her screw in motion," &c. "If the *Kate Green* was loose in the slip and not fastened at all, her condition ought to have been seen and known * * * If the *Kate Green* was fastened, she was so fastened that she was at such a distance from the *Nevada*, that after she began to be drawn over by the suction, there was abundant time for the *Nevada* to have stopped," &c. (*id. fol.* 401). What the real facts were is left undecided.

It is submitted that one or the other statement was true, that the *Kate Green* was, or was not securely fastened, and that the allegations of the libel should have been sustained to hold the steamer liable.

It is true that in the District Court the judge based his decision largely on the statements of the answer, and if his opinion was under review a doctrine not distinctly ruled at the circuit and rather startling in character would be presented, that is, whether a canal boat, supposed to be insecurely fastened, and duly warned, could obstinately neglect to strengthen her fastenings, and thus in fact prevent the steamer starting, and still claim to recover for her own willful fault. "An unheeded warning," * * * said the judge of the District Court, "so far from relieving the *Nevada* from fault,

only seems to make her fault in starting her screw more clear" (*p.* 225, *fol.* 400).

But in the Circuit Court the finding is that the canal boat was not warned (*p.* 246, *7th and 10th Findings*), and that the *Nevada* did not see her. This view of the District Court need not, therefore, be considered.

II.—No negligence, *in fact*, was found by the court below. Negligence was found as a conclusion of *law* from the facts found. The decree should, therefore, be reversed, unless the facts found prove conclusively that the steamer was in fault.

The facts on which the negligence of the steamship is rested are, that after starting, and causing the displacement of water, and the suction necessarily consequent upon her moving forward, she did not see the position of the canal boat, did not hear the hail of her master, and did not stop the propeller. The conclusion of law from these facts is, that "the *Nevada* was in fault for not keeping a *sufficient* look-out aft and on the side next the slip, and in not seeing the *Kate Green* when she came in or as she swung over, and in not stopping the propeller in time to avoid the collision."

(1.) There is no authority for the conclusion that, as a matter of law, the *Nevada* should have kept a lookout "aft and on the side next the slip."

The absence of a "proper look-out" may be *evidence* of negligence where it appears that the absence of a look-out contributed to the collision (*The Farragut*, 10 *Wall.*, 334).

But a look-out, as generally understood, is a person stationed "on the *forward part* of the vessel" (*The Ottawa*, 3 *Wall.*, 268).

It is nowhere stated *as a rule of law* that a vessel must have either lights or a look-out on the stern (*vid. The City of Brooklyn*, *Law Rep.*, 1 *Prob. & Div.* [1876] 276).

"I do not think there is any necessity for a ship ahead to lookout for ships behind her, unless the danger is apparent"

(*per* LUSH, *J.*, *id.*, *p.* 278; and see *The Anglo Indian*, 33 *Law Times*, *N. S.*, 233).

There is no finding that the steamer had no look-out aft. She had persons there whose duty it was to see that all was clear (*p.* 46, *fol.* 83, *p.* 72, *fol.* 132). The finding is, that she had no *sufficient* look-out, because they didn't see the canal boat.

(2.) How properly to get out of the slip in a case like that presented here is clearly a matter of nautical skill and experience.

Confessedly, the admiralty rules do not apply, unless it be the 24th, that nothing in the rules shall exonerate any ship from the consequences of "any neglect to keep a proper look-out, or of the neglect of any precaution which may be required *by the ordinary practice of seamen*" (*McLachlan on Ship.*, 302; *Act of Cong. of* 1864, cited in 10 *Wall.*, 338).

This then is a question of expert evidence.

In *The City of Washington*, 92 *U. S.*, 31, it was held that where the rules prescribed by law, nor the settled practice in admiralty have made no provision, testimony as to usage should be received, or that of competent witnesses as to what is and what is not good seamanship (*p.* 39; and see *Transp. Co.* v. *Hope*, 95 *U. S.*, 297).

(3.) There was no evidence given in this case by any pilot, seaman, or by any one skilled in navigation or accustomed to move large steamers out of their berths, to show that the *Nevada* was not properly managed. There is no finding that any such evidence was given. There is no finding of negligence as a matter of fact, though such a finding was distinctly requested by the libellants (*p.* 242, 20th Request), but negligence was held as matter of law from facts, from which it is submitted no one not an expert could properly determine that they established negligence.

(4.) After an accident occurs, all men can see how it might have been, or *perhaps* might have been, avoided. The learned judge, at the Circuit, says that the steamer, if she had a look-out, might have stopped. To meet this view, the testimony of six competent witnesses was given, *which was not disputed*,

to the effect that once her lines cast off, and the ship under way, if she was stopped, the flood tide would catch her by the bows, carry her across the slip and endanger the vessels moored there. The judge said of this testimony: "If this was really so, of which I am by no means certain, it was a fault in the steamer *to start* without making provision to counteract the effect of the tide in case it became necessary to stop" (*p.* 247, *fol.* 447); and suggests, further on, what provisions to counteract the tide he had in mind: "If she cannot get out by the use of her own propeller without doing damage to other vessels that are lawfully moored near her, she must employ a tug" (*p.* 248, *fol.* 448).

The basis for this suggestion seems to be in the testimony of Williams (*p.* 232, *fol.* 414) that some of the danger might be avoided by using a tug, but he also said that even then, if the boats got adrift, they would be in danger, and added that he never knew of a steamer being taken out of a slip by a tug (*p.* 233).

The suggestion about a tug was not based on the testimony. It was thrown in. No finding is made as to the propriety of having a tug. Of course, no tug could have moved the vessel without being under way. The displacement of bulk would have been as great. The difficulty of preventing the effect of the tide without steerage-way would have been the same.

The rule in such cases is thus stated: "Where the master takes all such precautions as a man of ordinary prudence and skill, exercising reasonable foresight, would use to avert danger, his owners are not held responsible because he may have omitted some possible precaution which the event suggests that he might have resorted to" (*The William Lindsay, Law Rep.*, 5 *Pr. C.*, 338, 343). "These questions of negligence must be decided by what a prudent and skillful seaman would do under the circumstances, and by what he is able to do" (*id.*).

(5.) The judge, at Circuit, erred in refusing to find the claimant's (appellant's) Ninth Request, that the stoppage of the *Nevada* after she had started would have been "so dangerous to the *Nevada* and all the other vessels in the slip" that the master would not have been justified in stopping her.

The evidence to this effect was from six witnesses of expe-

rience (*pp.* 227–237), and no evidence was given to the contrary. The appellant was entitled to have that fact in the case.

**III.**—There is no authority for the stringent rule applied to the *Nevada*, in this case, that a large steamer leaves her dock at her peril.

She has a right to start at an hour fixed, "in order to cross the bar at Sandy Hook at high water."

She has a right to cause such swell or displacement of the water as is incident to her being a large vessel, or she has no right to be a large vessel at all (*The Daniel Drew*, 13 *Blatchf.*, 523).

If she moves from her pier, after giving due warning, in a slow and cautious manner, she is not answerable for the consequences which flow from her motion, and which are due to the negligence of the neighboring craft (*id*).

It is found that the *Nevada* took all the proper means of warning the vessels in the slip; that they were all in fact warned except the *Kate Green*, which missed the warning, because she came in after it was given (*p.* 245, Fifth and Sixth Findings). The *Kate Green* came in just as the steamer was starting, but she was in tow of a tug competent to keep her away. If she or the tug had taken the slightest precautions, all danger might have been avoided.

In *The City of Paris*, 14 *Blatchf.*, 531, the chief justice held a boat situated as this was to a reasonable degree of vigilance, but in the case at bar, distinguished that case by the fact that the libellant then knew the vessel was about to sail, and finds that the *Kate Green* "had no time after her arrival, to give *particular* attention to what was being done on board the *Nevada*, or on the pier, * * * all the bells were rung and whistles blown (on the *Nevada*) before she arrived, *or* while the attention of those on board was given to making her fast and getting her away from the tug," &c. (*p.* 246, *fol.* 441).

**IV.**—But if the *Nevada* did all that was customary, and ordinarily prudent, she cannot be held liable because a vessel slipped in unnoticed, unless she is held to the rigid rule that she starts at her peril. This is the rule laid down in the decision appealed from, but it is a new rule, declared then, for substantially the first time.

Even in the case of a launch in a crowded river, it has been held that while "it is the duty of those who launch a vessel to do so with the utmost precaution, and to give such notice as is reasonable and sufficient to prevent injuries happening from that event," yet if such notice is given, and such precautions taken, those who launch the vessel are not liable if accident occurs from the neglect of the vessel injured.

In the case of the *Glengarry*, launched in the Mersey on the Liverpool side, signals of various kinds were given and other precautions taken, but no special notice given. The court held that the usual and customary precautions having been taken, the owners of the launch were not in fault (*The Glengarry, Law Rep.*, 2 *Prob. Div.*, 238).

In the case, however, of *The Andalusian*, *id.* 231, they were held liable, because of actual neglect.

And see *The Blenheim*, 2 W. Rob., 421; 4 *N. of Cas.*, 393; *The Vienna*, 2 *Swab.*, 405; *The United States*, 12 *L. T.* (*N. S.*), 33.

A launch, of course, is a more unusual and hazardous use of navigable waters, than the starting of a steamer from its recognized moorage, at a regular hour, and by ordinary methods.

It is submitted, that there is no authority for the rule that it starts at its peril, and cannot use its own motive power.

**V.**—The finding that the *Kate Green*, under the peculiar circumstances in which she was placed was not in fault (*p.* 246, *fol.* 441), is erroneous.

(1.) This is found as a conclusion of law, not of fact, and is,

therefore, erroneous for the same reasons urged in respect to the finding, that the *Nevada* was in fault.

The libellants had requested the court to find as matter of fact, that "there was no contributory negligence on the part of those in charge of the *Kate Green*" (*p.* 242, 21st request), but the court refused so to find as matter of fact.

But the court did find that just as the *Nevada* was starting, the *Kate Green* came into the slip in tow on the port side of the tug *Jacob Senex*; that the tug let her go while she was making fast, and was backing out when the *Nevada* started; that at that time full public notice had been given that the *Nevada* was about to depart; that she had been advertised to sail at that hour; that signals indicating that she was about to depart were flying at her masthead, and there was about her decks and on her pier all the bustle and noise which usually accompanies the sailing of a large ocean steamer.

The court also found, however, by way of excuse for the *Kate Green*, that no special notice was given to her, that she had no time after her arrival to "give *particular* attention" to what was being done on the *Nevada*, or to examine *particularly* the fastenings of the *Hart*, to which she was making fast.

To conclude that she was in not fault under the circumstances, is to hold that no duty of vigilance or care was incumbent on her. But a vessel that comes in and takes voluntarily a position of hazard is responsible for the circumstances (*The Lidskjalf*, 1 *Swab*, 117).

(2.) The *Kate Green* had no motive power of her own, but was in charge of a tug having sufficient motive power to take care of her. The tug had brought her from pier 7, East river, round the battery up in front of the piers on the North river to pier 46, passing numerous slips from which ferry boats and other vessels were constantly starting. She passed in front of the *Nevada*, according to the findings, just about the advertised time for her saling. It seems incredible that those on the tug and canal boat should not have suspected that the *Nevada* might be starting. The court found that the *Kate Green* had no time to give *particular* attention to these indica-

tions, but if by taking time she could have avoided danger, it was her duty to do so. She had as much time as the *Nevada*.

The tug-boat was in command of Gates, a pilot of experience (*p.* 43); as he came up he turned the corner of the pier "very close passing in to the steamer" (*p.* 50, *fol.* 90), and said that it was his "attention to his own business" that prevented his seeing anything. The libellant testified that if he had supposed the steamer was starting he wouldn't have let the tug go (*p.* 22).

It need hardly be said that some duty of vigilance was incumbent on the tug and the canal boat.

**VI.**—If the canal boat and tug were in fault, as the court below was somewhat disposed to hold (*p.* 248, *fol.* 449), and the steamer held also to blame, the decree should be reversed *at least* to the amount of the damages awarded to the canal boat, and of those one-half should be deducted from the recovery of the cargo (*The City of Paris*, 14 *Blatchf.*, 531; *The Eleonora*, 17 *id.*, 88).

**VII.**—But the cargo, in this case, is not entitled to the benefit of the rule applied in the above cases, upon the authority of *The Atlas*, 93 *U. S.*, 302, and cannot be deemed an innocent sufferer.

(1.) The cargo should be identified with the tug and canal boat, because the employment of the tug was by the canal boat, under the direct instructions of the consignees of the cargo (*p.* 11, *fol.* 31, "Tow your boat to pier 47, N. river

and deliver cargo to steamer *Queen*. M. F. James & Co." *p.* 60).

(2.) The rule laid down in *The Atlas* applies only to an innocent owner proceeding in his own behalf. Here, McKnight, the purchaser of the claim, applied for leave to come in under the libel filed by Quick, as owner of the canal boat (*p.* 10). He co-operated with Quick, and Quick made out his case for him. He never filed a separate libel or made an independent claim.

(3.) McKnight was a speculative assignee (Appellants' 11th Request, *p.* 244). He bought the claim for damages to the cargo at a sale of the assignee in bankruptcy of the insurance company, for twenty-five dollars (*p.* 40, *fol.* 73; *p.* 238).

The claim had been in the control of the assignee nearly three years from Dec. 18, 1871, the date of his appointment (*pp.* 58-9), until the 22d August, 1874, the date of the sale to McKnight (*p.* 40). He had tried to collect the claim of the agents of the steamer (*p.* 41, *fol.* 75), but did not prosecute it.

Yet the decree of the court below awarded to the assignee the sum of $5,860.51 and interest.

(4.) The sale to McKnight did not pass the claim against the vessel. An injured party has in admiralty the option to proceed *in rem* or *in personam*. It was the claim *in personam* only that was assigned. The assignment reads "all claims and demands against the Williams & Guion Steamship Company for destruction of cargo," &c. The claim against the vessel is not assigned. The transfer should, under the circumstances, be construed strictly as against an assignee, of a stale claim, substantially abandoned by the real sufferers and purchased for a trifle (*Propeller Mohawk*, 8 *Wall.*, 153, 162).

**VIII.**—The steamer was not in fault, and Quick, the libellant, knew it. He saw Mr. Williams, the agent of the line to which the *Nevada* belonged, shortly after the accident (*p.* 141, *fol.* 250), and told his story, but Williams was dead at the time of the trial (*p.* 160, *fol.* 282). Quick delayed his suit till witnesses were scattered, and the facts largely forgotten. He did not sustain the allegations of his libel, but has recovered upon a hypothetical state of facts and an original theory of the duties of a steamer starting from her usual berth, which practically makes the steamer liable at all hazards, and exempts neighboring vessels from all vigilance.

S. P. NASH,
*Proctor and of Counsel for Appellants.*

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1881.

No. 58.

THE STEAMSHIP NEVADA, HER TACKLE, &C.; THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY, LIMITED, CLAIMANT,

*Appellant,*

vs.

SERJEANT J. QUICK, LIBELLANT, AND FREDERICK A. McKNIGHT, CO-LIBELLANT,

*Respondents.*

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF NEW YORK.

# BRIEF FOR RESPONDENTS.

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# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1882.

No. 58.

THE STEAMSHIP NEVADA, her tackle, &c.; THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY, LIMITED, Claimant,

Appellant,

vs.

SERJEANT J. QUICK, Libellant, and FREDERICK A. MCKNIGHT, Co-Libellant,

Respondents.

} Points of Respondents.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

## Statement.

This cause comes to this Court upon an appeal from a decree made by Chief Justice Waite, holding a Circuit Court of the United States for the Southern District of New York, dated September 10th, 1879, adjudging that the libellant, Serjeant J. Quick, recover against the steamship *Nevada*, her tackle, &c., the sum of $5,219.12, and that Frederick A. McKnight, the co-libellant, recover against the steamship *Nevada*, her tackle, &c., the sum of $8,718.98.

The suit is one *in rem* for damages, resulting from a collision, and was commenced in the District Court of the United States for the Southern District of New York, by Serjeant J. Quick, the owner and master of the canal boat which was sunk. The libel was filed by Quick for himself and for F A. McKnight, the

owner by assignment of the claim for loss of cargo, on the 22d day of November, 1875.

On the 5th day of March, 1877, an order was made by said Court on the motion of McKnight, permitting him to intervene in the suit as co-libellant, and to introduce proofs in support of the libel and of the petition setting forth the grounds of his claim.

The suit came on for trial before his Honor, Judge BLATCHFORD, on the 19th day of June, 1877, and a decree was afterwards, to wit, on the 30th day of November, 1877, entered in favor of the libellant and co libellant, and it was referred to a commissioner of that Court to ascertain and compute the amounts of their damages respectively, and to report thereon. The opinion of his Honor, Judge BLATCHFORD, will be found at page 224 of the Record.

The report of the Commissioner was filed on the 19th day of February, 1878, and a final decree entered on the 25th day of March, 1878, in favor of the libellant and co-libellant for the amounts reported by the commissioner as their damages respectively.

An appeal was thereupon taken from the decree of the District Court, and, new evidence having been taken, the cause came on for trial before Mr. Chief Justice Waite in the Circuit Court of the United States for the Southern District of New York, on the 17th day of June, 1879. The learned Chief Justice filed an opinion affirming the decree of the District Court, which will be found at page 247 of the Record.

Exceptions to the findings of fact and law made by the Circuit Court were then filed by the Proctors for the claimant and constitute the only exceptions, which are to be heard on this appeal. The bill of exceptions is set forth at page 249 of the Record.

The findings made by the Circuit Court, with those portions of them to which exceptions have been taken, printed in italics, are set forth below:

## Facts Found by the Court.

1. About three o'clock in the afternoon of September 27th, 1871, the steamship *Nevada* left her berth, in the slip between piers 46 and 47, North River, New York, on a voyage to Liver-

pool. She was one of a line of ocean steamers plying regularly between New York and Liverpool, owned by an English corporation, of which Williams & Guion were agents in New York, and, previous to her departure, lay on the north side of pier 46, with her bow towards the river and her stern towards the bulkhead.

2. The slip was two hundred and five feet wide, pier 46, six hundred and thirty feet long, and pier 47 six hundred and twenty-four.

3. On the opposite side of the slip, and on the south side of pier 47, lay the steamship *Queen*, also with her bow toward the river, and her stern towards the bulkhead. The bow of the *Nevada* was about thirteen feet back from the end of her pier, and that of the *Queen* fifty-two feet six inches from the end of hers. Two floating grain elevators lay alongside of and moored to the *Queen;* one named *Scotia*, at one of the forward hatches, and the other, named *Metropolitan*, at one of the after-hatches. The canal boat, *Sarah and Madonna*, lay alongside of the *Metropolitan*, with her stern towards the bulkhead, and was being unloaded into the *Queen*. At her stern lay the canal boat *C. H. Hart*, with her bow towards the bulkhead, and extending some distance beyond the *Metropolitan*. Her stern was made fast by a line to the *Metropolitan*, and her bow by another leading to the deck of the *Queen*. She was waiting her turn to be unloaded. One or more boats lay alongside the *Scotia* and moored to her, and there were two lighters at the bulkhead astern of the *Nevada*.

4. The length of the *Nevada* was three hundred and fifty-five feet, and her beam forty-three feet four inches. The length of the *Queen* was three hundred and eighty-one feet, and her beam forty-two feet four inches. The *Metropolitan* was about eighty-seven feet long, and her width twenty-four feet. The *C. H. Hart* was ninety-six feet long, and her width seventeen feet four inches.

5. *Just as the Nevada was starting, the canal boat, Kate Green, owned and commanded by the libellant, Quick, came into the slip* in tow on the port side of the tug *Jacob Sinex*, and was placed alongside the *C. H. Hart*. *Her master, Quick, made a line fast from her bow to the bow of the Hart, and her steersman another from her stern to the stern of the Hart.* While this was being done the tug let go and commenced backing out of the

slip, but she had only time to get under the stern of the *Kate Green*, or a little beyond, when the *Nevada* started.

6. Previous to the time the *Kate Green* came into the slip, full public notice had been given by those in charge of the *Nevada* that she was about to depart, and particular notice was also given to all the boats then alongside the *Queen*, including the *C. H. Hart*. When the *Hart* came in she was sent up the slip in order that she might keep out of the way. The *Nevada* had been advertised to sail at that hour. Her bells had been rung and her whistles blown several times. Signals indicating that she was about to depart were flying at her masthead. She took out on that voyage a considerable number of cabin and steerage passengers, and there was about her decks and on her pier all the bustle and noise which usually accompanies the sailing of a large ocean steamer.

*7. The Kate Green was not seen from the Nevada when she came in, and no special notice was given to her that the Nevada was about to leave. She had no time, after her arrival, to give particular attention to what was being done on board of the Nevada, or on the pier. All the bells were rung and whistles blown before she arrived, or while the attention of those on board was given to making her fast, and getting away from the tug. Neither was there time for her master to examine particularly the fastenings of the Hart. The Nevada started almost simultaneously with her getting alongside the Hart, and the first actual notice she had that the Nevada was about to leave was when the propeller commenced moving. If she was in fact made fast at the time, it had only just been done. She lay about sixty feet from the Nevada.*

8. The tide was flood, and running up by the ends of the piers pretty strong.

9. *When the Nevada started*, the revolution of her propeller and her own motion caused a displacement of the water in the slip, and a suction which drew the *Hart* and the *Green* away from where they were lying, *and broke the bow fastenings of the Hart*. As soon as this was done, the *Green* swung rapidly toward the *Nevada*. Her master, who was on deck, called loudly to the *Nevada* to stop the propeller, but he was not heard, or if heard not heeded. The *Nevada* kept on without stopping, and the revolving blades of her screw struck the *Green* under the water line and a little aft of the port bow, inflicting such an

injury as caused her, the *Green*, to sink soon after, with her cargo on board, and some articles of furniture, &c., belonging to her owner.

10. No one on board of the *Nevada* knew of the parting of the *Hart's* lines, or of the swinging of the *Green*, or of the accident, until after they arrived in Liverpool. If a man had looked from her deck over her side into the slip, he could not have failed to see what was going on all the time, from the first movement of the propeller, and before, until she got out.

11. *There was an abundance of time after the breaking of the fastenings of the Hart, and after the Green began to swing, and after the hail of her master, to have stopped the propeller, before the collision.*

12. *The report of the commissioner as to the damages is warranted by the evidence*, and the libellant, McKnight, was the owner of the claim for damages when the libel was filed.

## Conclusions of Law.

*1. The Nevada was in fault for not keeping a sufficient look-out aft and on the side next the slip, and in not seeing the Kate Green when she came in, or as she swung over, and in not stopping the propeller in time to avoid the collision.*

*2. The Kate Green, under the peculiar circumstances in which she was placed, was not in fault.*

*3. The libellants are entitled to recover the damages reported by the commissioner.*

## POINTS.

### I.

The facts found by the Circuit Court are conclusive, and neither the propriety of the Court's findings of fact nor of its refu-

sal to find facts as requested, can be called in review in this Court.

*The Abbotsford* (98 U. S., 440).
*The Benefactor* (102 U. S., 214).
*The Adriatic* (103 U. S., 730).
*The Annie Lindsley* (104 U. S., 185.)
*The Francis Wright* (unreported.)
Rule 8, Subd. 6, Supreme Court Rules.

But even if the findings of fact made by the Circuit Court could be reviewed here upon exceptions, such review would be unavailing to the appellant as the weight of evidence is clearly in favor of every one of the findings of the Court. This would fully appear upon an examination in detail of the appellant's exceptions.

But in view of the language of this Court, in the cases of *The Annie Lindsley* and *The Francis Wright*, decided at the last Term, it would be, we think, unbecoming in us to burden the Court with any discussion of the evidence in the cause which sustains either the findings which are excepted to, or the refusals to find which are excepted to.

If, indeed, there were any one of those findings of fact, as to which it could be claimed by the appellants that there was no evidence to support it, it perhaps would become necessary for us to point out to the Court that there was such evidence. But it is to be noted that no exception is taken to any one of the findings of fact *on that ground;* nor could there be, for every one of them is overwhelmingly sustained by evidence.

Or if there had been any refusal to find any material fact, which the appellants insisted to have been proved by undisputed evidence, it might be incumbent on us to point out to the Court the evidence claimed by us to controvert such fact.

But as to these exceptions also, there is no claim that any but one (see appellant's ninth request and eleventh exception) of the facts requested and not found was proved by undisputed evidence. Nor could there be, for as to each one of them, there is not only evidence to oppose it, but overwhelming evidence to disprove it.

This being the case, the questions, the only questions, to be presented to the Court, are the questions arising on the exceptions of the appellants to the findings of law which the Circuit Judge made, and to his refusal to make the findings of law requested by them.

## II.

The Nevada was clearly at fault in not having a look-out aft at the time of and prior to the collision.

The claimant's sixth exception is taken to the first conclusion of law found by the Court, which is in the following words:

**"The Nevada was in fault for not keeping a sufficient look-out aft and on the sides next the slip, and in not seeing the Kate Green when she came in or as she swung over, and in not stopping the propeller in time to avoid the collision."**

The claimant's fourteenth exception is taken to the refusal of the Court to find the second conclusion of law proposed by the claimant, which is in effect the reverse of the proposition found by the Court.

Both exceptions may be considered under one head.

1. Irrespective of the question how far the presence of a look-out might have prevented the disaster, his absence alone raises a presumption against the steamer.

"The want of a look-out detailed and stationed for the constant performance of that specific duty, is of itself a circumstance of a strong condemnatory character, and exacts in all cases from the vessel neglecting it, clear and satisfactory proof that the misfortune encountered was in no way attributable to her misconduct in that particular."

*The Northern Indiana*, 3 Blatch., 166.

"The waters near the City of New York are at all times crowded with shipping; navigation there is not unlike a traveler

threading his way through the mazes of a forest, with the difference that most of the objects to be avoided are also in motion. The greatest care and caution are necessary. The duty of the look-out is of the highest importance. * * * * Every doubt as to the performance of this duty, and the effect of non-performance, should be resolved against the vessel sought to be inculpated until she vindicates herself by testimony conclusive to the contrary."

*The Ariadne* (13 Wallace, 478).

"But when, as in this case, a ship at the time of a collision is in actual violation of a statutory rule intended to prevent collisions, it is no more than a reasonable presumption that the fault, if not the sole cause, was at least a contributory cause of the disaster. In such a case the burden rests upon the ship, of showing not merely that her fault might not have been one of the causes, or that it probably was not, but that *it could not have been.*"

*The Pennsylvania* (19 Wallace, 136).

2. But, aside from the presumption, there can be no doubt that in the present case the presence of a competent and faithful look-out on the stern of the *Nevada*, from a period just before the collision until the steamer emerged from the slip, would have prevented the collision, or, at any rate, the damage which flowed from it.

It was the duty of those navigating the *Nevada* to keep themselves well informed of the constant succession of changes in the situation of the vessels about her in the slip, and it was their duty to have seen the arrival of the *Kate Green* in the slip, and the efforts of her master and steersman to make her fast.

It was their duty to make sure that those navigating the canal-boat knew of the *Nevada's* intended departure, and it was their duty to prevent the moving of the steamer's propeller until those in charge of the canal-boat had moored her in such a way as to resist its action.

In all of these respects the *Nevada failed of her duty*, and

by the presence of a look-out this duty might have been ascertained and fulfilled.

The facts bring this case within the principle of *The Leo* (3 Benedict, 570). In that case a canal boat was moored at Pier 16, and was there securely fastened to the bulkhead by two strong lines, sufficient to enable her to withstand all the ordinary forces of wind or tide. The *Leo*, an ocean propeller, having a screw 11 feet 9 inches in diameter, was lying at the same time at Pier 16, her stern towards the canal boat, and from 40 to 75 feet therefrom. On the 13th of April, which was the sailing day of the steamer, and about three-quarters of an hour before her sailing hour, the *Leo*, while moored as above described, started her screw, which was caused to revolve at the rate of about thirty revolutions per minute. The water was low and this action of the screw threw a strong current of water directly towards the bulkhead, at which the canal boat was moored, with sufficient force to part the lines holding the canal boat, which was whirled around in the slip some three times in spite of the efforts of the crew to check her, and then driven against the bulkhead, whereby she was so injured that she sank and was wholly lost. No notice of any kind was given from the propeller of her intention to start her screw, but as soon as those on board were notified that the canal boat had broken loose the screw was stopped, not, however, in time to prevent the accident which followed. In speaking of the force arising from a current produced by a steam propeller Judge BENEDICT says:

"This current of water, which acts with sufficient power to propel the large vessel, at high speed, against the heavy head seas of the ocean, of course, when the steamer is fast to the wharf, is driven aft the vessel, with very great force, and almost necessarily involves danger to surrounding vessels, as the fact of this case, as well as those in the case of the *Washington* (2 M. L. Cases, p. 23) clearly show, and the question might perhaps arise *as to the legal right of any vessel to set in motion in the crowded slips of this port a force so powerful.* Such action is expressly forbidden in the River Thames (see Thames Conservatory By-Laws, 1860). But upon the evidence in this case the question is narrowed to determining whether such a force can be set at work without giving previous notice to surrounding vessels so as to enable them to protect themselves against it.

To such a case the maxim *sic utere tuo ut alienum non laedas* applies, and it must be held that, if the propellers have any right at all to turn their screws when the vessel is fast in the slip, it is certainly accompanied with a duty of in some way notifying vessels likely to be affected so as to give them the opportunity, by getting out extra lines or otherwise, to protect themselves against the current which must flow from the motion of the screw."

This case still more closely resembles that of *The Colon* (8 Benedict, 512). A canal boat loaded with coal was lying at a slip in which a steamship lay, discharging her cargo. It became necessary to turn the canal boat around in the slip, and she was cast loose for that purpose. A line was got out from the stern of the canal boat to the pier on which the master of the canal boat was pulling with his back to the steam ship, when the steamship was started and the suction pulled the canal boat over till she was struck by the screw and so injured that she sank. It was the regular sailing day of the steamship, and the screw was put in motion before starting, as was customary, for the purpose of seeing if the machinery was in order before putting the propeller in motion. The officers of the steamship had examined to see if there was any vessel which might be injured by the action of the screw, but some little time had elapsed after that examination before the screw was put in motion.

Judge Blatchford says: "It is quite apparent that if, after the screw began to work and while it continued working, some proper person had been stationed on the stern of the *Colon*, the canal boat and her movements would have been under observation from the *Colon*, and the screw could have been stopped and the collision avoided. When the libellant found that his boat was being drawn towards the screw, he cried out loudly to the *Colon* to stop working the screw, but there was no one on the look out to respond. Officers of the *Colon* testify that before the screw was set in motion they took the precaution to look from the stern and port side of the *Colon* into the slip to see whether there was any boat in a position to be injured by the working of the screw, and saw none. Some little time, however, elapsed after that before the screw was started, and it was not enough for the officers merely to observe the

state of things before starting the screw. A watch should have been kept from the stern of the *Colon* all the time the screw was in motion. Moreover, a careful observation at the moment the screw was put in motion, would have shown that the canal boat was in transit, and was in a position of danger if the screw should be started. All this shows negligence on the part of the *Colon*, and I see no contributory negligence on the part of the canal boat."

3. Again, it was the absence of a look-out which caused the failure of those in charge of the *Nevada* to discover the necessity for stopping her propeller, after the canal boat broke from her mooring and began to drift towards the propeller, and this failure is clearly a fault on the part of the *Nevada*.

It is no answer to this to say that it would have been dangerous for the *Nevada* to have stopped her propeller after once starting it.

It is conceded by the witnesses for the appellant that the danger of stopping a propeller, if any, exists only after the vessel has proceeded some distance. As no lookout was present to discover the parting of the canal boat's lines, it is impossible to say whether danger would have existed in stopping the propeller of the *Nevada* or not, at the time of the breaking of the canal boat's lines. All doubt should be resolved against the vessel failing to provide the lookout.

The learned Chief Justice has refused to find upon the evidence that there would have been danger in stopping the propeller. He says that he is "by no means certain of it."

But even if supported by evidence the proposition is clearly immaterial.

If it is impossible for a vessel to control her movements in a narrow slip by the use of a screw propeller, then other motive power should be employed by her in leaving her berth.

The danger of stopping, if any, is admitted to be caused by the flood tide. The evidence shows that the steamer might well have employed tug boats or might have left at slack water. Both of these courses were open to her.

The learned Chief Justice suggests in his opinion that other

provision might have been made "to counteract the effect of the tide in case it became necessary to stop," and that failure to make such provision constituted a fault in the steamer.

Aside, therefore, from the fault committed by the *Nevada*, in *starting her propeller* without making sure that it was safe to do so, she was also negligent in placing herself in a position where, if it became necessary for her to stop her propeller, she would collide with other vessels.

Upon this point the case of *The Egyptian* (1 Moore's P. C. N. S., 373) is pertinent. In that case the facts were that a port cable of the steamer parted while her master was engaged in mooring her for the night, and she bore upon a schooner anchored a short distance away. It was there held that the steamer was at fault for having "placed herself at single anchor in a position where, if the slightest accident arose to interrupt or embarrass the manœuvre which her master was engaged in conducting, it was all but impossible to avoid a collision with the schooner."

See also

*The Indian* vs. *The Jessie* (12 Law Times, N. S., 586).
*The Anglia* (7 Blatch., 190).
*The Titan* (8 Benedict, 7).

## III.

The claimant's seventh exception is taken to the second conclusion of law found by the Court, which is in the following words:

**"The *Kate Green*, under the peculiar circumstances in which she was placed, was not in fault."**

The claimant's thirteenth exception is taken to the refusal of the Court to find the first conclusion of law proposed by the complainant, which is the reverse of the proposition found by the Court, as above.

Both exceptions may be considered together.

1. The *Kate Green* was towed into the slip for a perfectly legitimate and proper purpose and was moored, so far as her own lines were concerned, in an entirely secure and proper manner, as evidenced by the fact that her lines stood the test and did not break.

2. She is chargeable with no negligence in fastening to the *Hart*.

(*a*) Because the *Hart* was herself sufficiently well-moored to have held the *Green* against all the pressures or disturbances usually and ordinarily to be met with in a narrow slip, or against those arising from any cause excepting the motion of a steamer's propeller.

(*b*) Because the *Kate Green* was absolutely without notice or knowledge of the *Nevada's* intended departure, and had, for that reason, no ground for apprehending danger from any source, and, therefore, none for taking precautions against any unusual disturbance in the water. And this is true entirely apart from the question whether the disturbance created by the *Nevada's* propeller on this occasion was unusually great for propellers of that kind or not.

(*c*) Because not only did the *Kate Green* receive no notice of the *Nevada's* intention to sail, but there was not time enough, before the steamer started, for her to moor elsewhere, or to remedy any defects in the *Hart's* mooring.

3. The *Kate Green* was guilty of no negligence in reference to the collision after the *Nevada* started, for her master did all in his power to prevent it. He hailed the officer standing aft on the *Nevada;* and had his hail been heard and obeyed, the collision could have been avoided.

4. The want of knowledge on the part of those navigating the *Kate Green*, that the *Nevada* was going to sail, as well as want of sufficient time after learning it, is conclusive against the charge of negligence in not strengthening her lines.

In this respect the case is distinguishable from *The City of Paris* (14 Blatch, 531).

5. Failure to observe the blue peter from the ship's mast head is not sufficient to charge the canal boat with negligence.
See *The Andalusian*, (46 L. J. Adm., Div. 77).

## IV.

The claimant's 8th exception is taken to the third conclusion of law made by the Court which reads thus:

**"The libellants are entitled to recover the damages reported by the Commissioner."**

The claimant's 15th exception is taken to the refusal by the Court to find the third conclusion of law proposed by the claimant, which reads as follows:

**"The libellants are not entitled to recover, by reason of the matters alleged in the libel or proved in evidence, and the decree appealed from should be reversed with costs."**

The claimant's 16th exception is taken to the refusal of the Court to find the fourth conclusion of law proposed by the claimant, which reads as follows:

**"In any case Quick is only entitled to recover $2,000 and interest for his boat, and McKnight is not entitled to recover for the cargo."**

The claimant's 17th exception is taken to the refusal of the Court to find the fifth conclusion of law proposed by the claimant, which reads as follows:

**"The *Kate Green* being undoubtedly at fault, the damages should at least be apportioned."**

1. If the Nevada was in fault and the Kate Green free from fault, then the libellant and co-libellant were clearly entitled to recover the damages sustained by them, which are the value of the boat and cargo respectively.

The value of the boat was ascertained by the commissioner, and his findings sustained by the District and Circuit Courts.

2. The co-libellant is entitled to recover the full amount of the damages to the cargo.

(*a*) The learned Court below has found, as a matter of fact, that the co-libellant McKnight was the owner of the claim for damage to the cargo when the libel was filed, and this finding of fact is not excepted to by the appellant; nor is the Court's refusal to find any specific facts upon which a contrary conclusion might have been founded, excepted to by the appellant; nor were any facts of this character proved or proposed as findings for the Court.

On the contrary, the Court was requested by the appellant to find that the claim of the Western Insurance Company, which it acquired by subrogation, *was sold* to McKnight.

It cannot therefore complain of the fact that the Court should so find.

(*b*) The Western Insurance Company was unquestionably vested with title to the claim against the *Nevada* for damages for loss of the cargo.

*The Chesapeake Ins. Co. vs. Stark* (6 Cranch, 268).
*Comeggs vs. Vasse* (1 Peters U. S., 193).
*Columbian Ins. Co. vs. Ashby* (4 Peters U. S., 139).
*Copeland vs. Pheonix Ins. Co.* (Woolw., 285).
*The Mutual Safety Ins. Co. vs. Cargo* (Olcott, 92).
*Fretz vs. Bull* (12 How. U. S., 466).
*The Brig Ann C. Pratt*, (1 Curtis R., 340).
*The Propeller Monticello vs. Mollison*, (17 How. U. S., 155).
*The Keokuk*, (1 Bissell, 522).
*The Ocean Wave*, (5 Bissell, 378).
*The Manistee*, (5 Bissell, 381).
*The Amazon Ins. Co. vs. S. B. Iron Mountain*, (1 Flip, 616).

(*c*) The claim passed to the assignee of the Insurance Company when the latter became bankrupt.

*Comeggs vs. Vasse, supra.*
Bankruptcy Act, 1867; Rev. Stats. (U. S.), § 5044.

(*d*) The claim was clearly assignable and properly vested in McKnight on the sale by the assignee of the bankrupt's effects.

*Comegys vs. Vasse, supra.*
*The People ex rel. vs. Tioga C. P.* (19 Wend., 73).
*McKee vs. Judd*, (12 N. Y., 622).
*Butler vs. N. Y. & Erie R. R. Co.*, (22 Barb., 110).

(*e*) If McKnight was the owner of the claim for damage to the cargo, then he was entitled to prosecute the same in this suit.

*Cobb vs. Howard*, (3 Blatch., 524).
*Swett vs. Black*, (1 Sprague, 574).
*The Mutual Safety Ins. Co. vs. The George, supra.*
*The Propeller Monticollo vs. Mollison, supra.*

(*f*) The co-libellant's right to recover in this suit the full amount of the damage to the cargo exists irrespective of any question of negligence on the part of the *Kate Green.*

*The Atlas*, (93 U. S., 302).

## V.

The claimant's eleventh exception is taken to the refusal of the Court to find the ninth finding of fact proposed by the claimant.

The proposed finding is as follows:

**"The stoppage of the *Nevada* in the slip after she had started to go out, would have been a proceeding so dangerous to the *Nevada* and all the other vessels in the slip, that the master of the *Nevada* would not have been justified in stopping her in order to prevent the collision."**

The testimony of the *Nevada's* officers in the District Court, in so far as it bears upon the subject matter of this finding, was more trustworthy, because more disinterested, than that which they gave after they became aware of the full extent of the *Nevada's* fault.

Captain Forsyth's testimony in the District Court was that, if a vessel was astern in danger of being struck, the *duty* of the lookout would be to signal him with his whistle, and *the order to stop could be given instantly.*

See Testimony, p. 64.

*Nor did he suggest, nor did it suggest itself to him that there would be danger in stopping.* On the contrary, his language was that it would be the lookout's *duty to signal the captain to stop the engines.*

Judge Blatchford had presumably this very testimony in his mind when he found, on the trial of the case in the District Court, that there was abundant time, after the *Green* began to be drawn over by the suction of the moving screw of the *Nevada*, for the *Nevada* to have stopped her screw and avoided the collision.

See Opinion, p. 36.

When the case went to the Circuit Court, however, the claimant sought to change the aspect of the proof upon this point and to show that although the *Nevada could have been stopped*, and although *it would have been the duty* of the lookout to signal to stop the engine if he had seen the *Green*, yet that the office of the look-out was a useless one, as it would have been *dangerous* to the *Nevada* and to other vessels for the steamer to have obeyed the signal.

The witnesses who were called to testify to this point were all (excepting Forsyth, as to whose testimony we shall comment further on) officers or pilots whose answers were elicited in response to hypothetical questions, the facts assumed in which could not be correctly understood by the witnesses, and who did not pretend to have any knowledge of the facts outside of those assumed by counsel.

As to Forsyth, who was called again to testify, he says that *it is impossible to say* whether after learning that there was danger of a canal boat being drawn under the stern of the *Nevada* and struck, he would have given an order to stop the screw or not. He says *it would depend upon how far he had proceeded.*

See testimony on appeal, p. 236.

There is, therefore, a fair conflict of evidence upon the claimant's own evidence, whether there would have been danger in stopping the *Nevada's* propeller after she had started.

The learned Chief Justice says in his opinion, that he is by no means certain that it would be dangerous.

The refusal, therefore, of the Court to find as requested is fully justified by the proof.

But if the danger had been proved in this case without contradiction, it would have been of no avail to the appellant. The steamer having been negligent in starting under the circumstances, could not claim that a danger, arising after she had started, should relieve her from the consequences of her previous negligence.

## VI.

### Reply to Points made by Appellant.

1. The appellant urges that the allegation in the libel is not sustained by the findings of fact, and that therefore the decree is not warranted. To this we answer:

(*a*) The appellant's brief does not accurately state the allegation of the libel, which is that the steamer "carelessly and negligently ran into and struck the said canal boat *with her propeller.*"

(*b*) It is a matter of no materiality whether, *at the moment* when the canal boat was so struck by the propeller, she was fastened, or whether, having been fastened, she was broken loose by the steamer before she was struck. If she was *carelessly and negligently* struck by the screw, the cause of action against the steamer was the same in either event.

Nor is it material that the Court has found negligence on the part of the steamer prior in point of time to that strictly complained of in the libel.

The finding of the Court is that the *Green* swung rapidly towards the propeller; that the master of the *Green* called loudly to the *Nevada* to stop the propeller, but he was not heard, or, if heard, not heeded, and that the *Nevada kept on*

*without stopping*, and *the revolving blades of her screw struck* the *Green* under the water-line," and the conclusion of the Court is that the *Nevada* was at fault for not seeing the *Green* as she swung over and for not stopping the propeller in time to avoid the collision, although there was abundant time to have done so after the hail of the master of the *Green*.

It is difficult to conceive of a finding more consistent with an allegation than that with the allegation of the libel referred to.

The mere fact that the Court finds antecedent negligence on the part of the steamer, in not having a lookout aft, which resulted in the breaking of the *Hart's* lines and in her drawing the *Green* into a position where *it was possible* for the steamer to run into and strike it with her propeller, does not aid the claimant, but only emphasizes and fixes, beyond doubt, the negligence complained of in the libel

(*c*) Such immaterial variations have never been held ground for reversal, where the controversy between the parties has been fully tried out in the Courts below and there has been no surprise on the parties. The very case cited by the appellant (*The Syracuse*, 12 Wall. 167,) is a striking instance of the application of the rule which we claim.

In that case the libel charged that the collision was occasioned by the carelessness and negligence of those in charge of the steamboat in not giving the brig lying at anchor a wide berth, which, as the libel alleged, she might have done, there being plenty of room between the Battery and the brig for the *Syracuse* to have passed with her tow. The libel also charged negligence *generally*, but did *not* charge negligence in not stopping before reaching the Battery and dividing the tow. The negligence last referred to was that upon which the steamer was held at fault.

The Court say, per Mr. Justice Davis:

"It is objected that the libel does not specifically charge this antecedent negligence as a fault. This is true, and the libel is defective on that account, but in Admiralty an omission to state some facts which prove to be material, but which cannot have occasioned any surprise to the opposite party, will not be allowed to work any injury to the libellant, if the Court can see there was no design on his part in omitting to state them.

There is no doctrine of mere technical variance in the Admi-

ralty, and subject to the rule above stated, it is the duty of the Court to extract the real case from the whole record, and decide accordingly. It is very clear that the libellant had no design in view in omitting to state the failure to stop as a fault, and equally clear, that the proof on that subject, coming, as it did, from the opposite party, could not have operated to surprise them."

See also *The Clement* (2 Curtis, 363).
*The Quickstep* (9 Wall., 670).
*The Lady Anne* (1 Eng. L. & Eq., 674).

In the case of *The Clement*, CURTIS, J., says:

"I do not intend to say that a libellant may plead one fault on the part of the vessel proceeded against, and offer evidence of another. On the contrary, I think his proofs must, generally, be restricted to his allegation, *to prevent surprise of the respondent*. But when he has been thus restricted, if the facts alleged and proved by him, taken in connection with other facts admitted upon the record by the claimant (in this case the *answer* had supplied facts, which, added to those in evidence by libellant, showed that libellee was in fault), entitle the libellant to recover damages, a decree should be made for libellant. * * * The rules of common law pleading are fully satisfied by a general allegation of negligence. The Admiralty requires that each party should state all the essential particulars which go to make up the fault alleged." "It may happen, as Dr. Lushington declares it did in the case of the *Lady Anne*, that the very point on which a case of collision hinged had never been touched upon at all in the pleadings (1 Eng. L. and E., 674). 'In matters of this description,' says Dr. Lushington, 'it will be quite vain to expect perfect accuracy as to facts or pleadings, and for an obvious reason.'" "No effect is allowed to a variance which cannot have surprised or injured the opposite party."

(*d*) But the District Court was undoubtedly right in holding that, either on the facts stated in the answer or those averred in the libel, the libellants were entitled to a decree.

2. The learned counsel for the appellant errs in saying (p. 8 of Points) that the steamer was held liable in the Circuit Court

on the assumption that the *Kate Green* was *loose*. (See 3d finding).

The steamer was held liable, on the double ground that she ought to have known that the *Kate Green* had just arrived without warning of the steamer's intended departure, and that such warning was necessary to enable the *Kate Green* to provide against the unusual strain which her fastenings would be obliged to bear from the movement in the slip of a screw-propeller.

3. As to the rule of law on the subject of lookouts aft, we need no other statement of it than the one quoted by the appellant from the case of *The City of Brooklyn* (Law Rep., 1 Prob. Div., 276), notwithstanding the wide difference between the case of a collision in the open sea and the case at bar. But in the case at bar, the danger was *apparent*.

It is because it was apparent, that the whistles were blown, and special notice was given to all the boats in the slip, except the *Kate Green*, of the approaching departure of the *Nevada*.

4. We concede that how to get a steamer out of a slip is a matter of "nautical skill and experience." But the appellant errs in saying that there was "no evidence to show that the *Nevada* was not properly managed," and that there is no finding to that effect.

The finding as to the public notice given, and the *particular notice* given to all the boats alongside the *Queen* (6th finding), sufficiently shows what was proper management.

And the finding that the canal boat came in afterwards, and was not seen, and no special notice was given to her (7th finding), is a finding that the *Nevada* had neglected "a precaution required by the ordinary practise of seamen."

5. The appellant seems to think that the ancient maxim "*Sic utere tuo, ut alienum not laedas*," meets with an exception in the case of an ocean steamer about to sail. But even if that were so; if she were entitled to sail at any time of tide "in order

to cross the bar," and therefore were not required to guard against being thrown by the tide against other vessels as she goes out; if she were entitled to use "her own motive power," even though that use destroyed the property of others, when she could sail just as well by using another motive power than her own, still she would be in fault *in this case* for failing, by reason of her faulty lookout, to give the *Kate Green* notice that the *Nevada* was about to exercise this supreme right, and that the *Kate Green* must protect herself.

6. The cases of launching furnish no support to the appellant. In this case, "usual and customary precautions" required the special notice to be given to the *Kate Green*, which *was* given to the other canal boats.

The rule as stated, both in *The Glengarry* and *The Andalusian*, cited by the appellant, requires the *utmost* precaution on the part of those launching a vessel.

If it is contended by the appellant that, after setting in motion its screw in a narrow slip, a steamer is practically as helpless as a launch after the ropes are cut, then certainly it should be held to the same degree of caution, and the notice which it gives should be sufficient to *prevent* injury.

7. The case of *The Lidskjalf* (1 Swab., 117), cited by the appellant, seems to be an authority against it. The Court in that case says: "When a vessel is lying on the shore and another vessel is placed voluntarily by her owners in such a position that damage will happen *if some event arises which it is not possible to control*, the second vessel must be responsible for the damage" (p. 119.) But the starting of the engine of the *Nevada* was an event which it was quite possible for her to control.

But the analogy of the case is this: The *Kate Green* corresponds to the "vessel lying on the shore." The *Nevada*, by starting her engines, was voluntarily placed by her owners in a position where damage must happen by reason of the currents of water, which it was not possible to control. She, therefore, must be liable for the damage.

8. The learned counsel for the appellant is in error in saying

(p. 16 of Points) that the claim against the vessel was not assigned to McKnight.

See deposition of Jewett, p. 40, fol. 72.
Schedule "A," p. 238.

The Court found as a fact that McKnight was the owner of the claim for damages, and that finding is not excepted to by appellant.

See 12th finding.

Nor is the refusal of the Court to find the claimant's eleventh request excepted to as stated in appellant's 8th ground of error on page 3 of its Points.

Nor is there any exception in the case under which the appellant's 9th ground of error (p. 3 of Points) may be urged.

## VII.

The main assignment of error by counsel for the appellant, is that the Court did not find that the steamer was *negligent, in totidem verbis*, as a matter of fact, but simply found negligence as a conclusion from other facts found.

In stating the facts, however, upon which the conclusion rests, the learned counsel omits to state the fact of the steamer's failure to see the canal boat *when she came into the slip*. The negligence of the steamer as to look-out was not only "after starting," but before starting.

1. It is conceded by counsel, in effect, that where facts are found which prove negligence *conclusively*, negligence may properly be inferred as matter of law.

It would seem that when an ocean steamer, while lying at her berth in a narrow slip where there are other vessels, sets in operation the powerful force of her screw propeller, a neglect to observe the succession of changes in the situation of the various vessels surrounding her and the arrival of a loaded canal boat on the opposite side of the slip, in full view of the

steamer; and a failure to notify the fresh arrival, in the same way as other vessels had been notified, of her intention to sail; and a failure to observe that the effect of the motion of her propeller after starting had broken the fastenings of the canal boat which had thus escaped warning; and a failure to hear or heed the hailing of the canal boat as she swung helpless towards the steamer; and a failure to stop her propeller in time to avoid a collision, although there was ample time to have done so after such hail, would amount to a conclusive demonstration of negligence.

"When there is such an obvious disregard of duty and safety as amounts to misconduct, the Court may declare it to be negligence, as a matter of law."

*Railroad Co. vs. McElwee* (57 Penn. St., 315).

"If a coachman intentionally drives within a few inches of a precipice and an accident happens, negligence may be ruled as a question of law. On the other hand, if he had placed a suitable distance between his coach and the precipice, but by the breaking of a rein or an axle, which could not have been anticipated, an injury occurred, it might be ruled as a question of law that there was no negligence and no liability."

*Railroad Co. vs. Stout* (17 Wall., 663).

See also cases cited in—

*Brooks vs. Somerville* (106 Mass., 271).
*Wharton on Negligence*, § 420, *et seq.*

2. But, further, in no case is the question of negligence considered solely one of fact. It is never submitted to a jury excepting with instructions of the Court which are reviewable.

Where, then, it is the same tribunal which finds the facts, pronounces the instructions, and draws the inferences, it is manifestly proper that the finding of negligence should be made as one of law, so as to be reviewable within the terms of the Statute of 1875. If it were found as a fact, the party charged would, under the statute, in every case be restricted upon appeal to a review of such exceptions in the case as precede the submission of the case to the Court.

It is manifest, moreover, from the opinion of the Court

that the learned Chief Justice considered the *Nevada* at fault, logically as well as legally.

## VIII.

This cause was fully tried in both Courts below, and no error can be found in the judgments brought up for review. The decree of the Circuit Court should be affirmed, with costs.

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Of Counsel.